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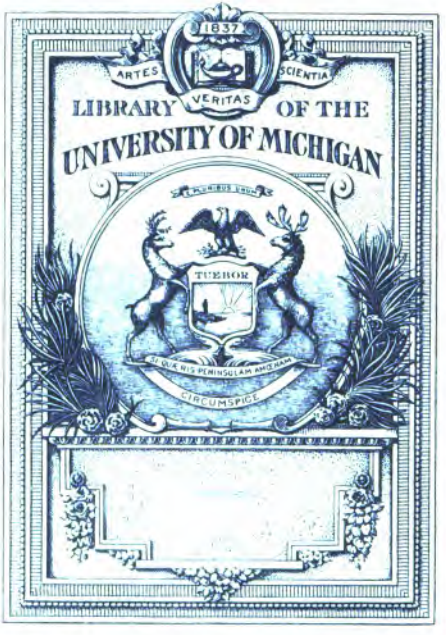
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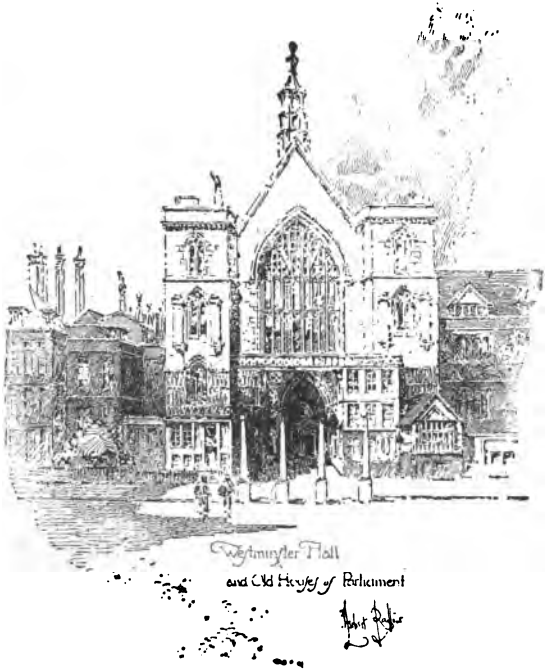
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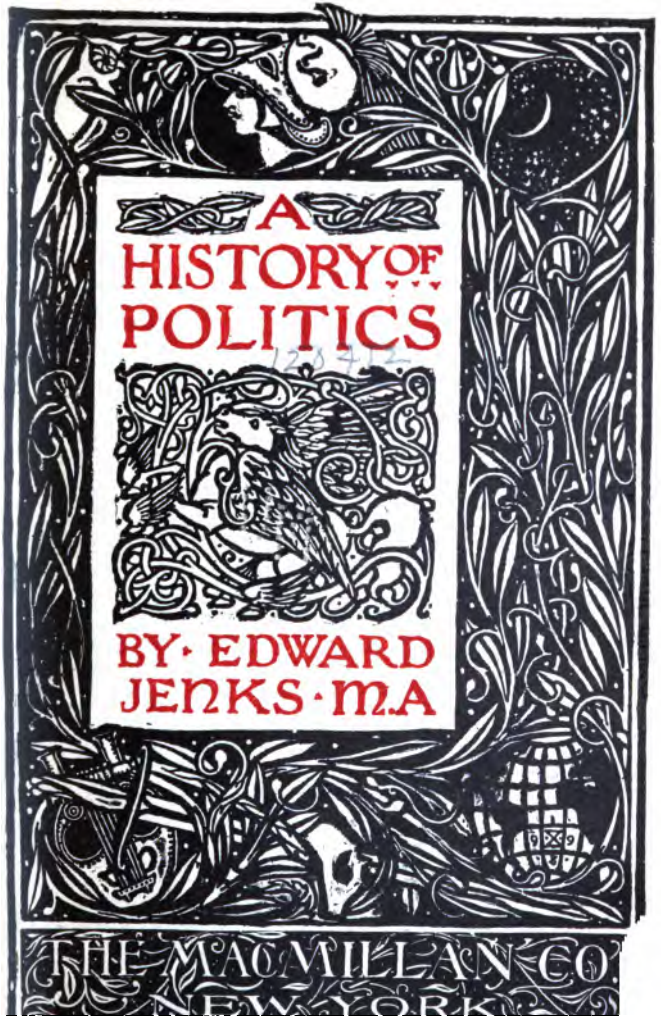
THE TEMPLE PRIMERS

A HISTORY OF POLITICS

By EDWARD JENKS, M.A.



Westminster Hall
and Old Houses of Parliament


A
HISTORY OF
POLITICS
BY · EDWARD
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PREFACE

SOME ten years ago Sir Frederick Pollock published a valuable and interesting little book on the history of political speculation.* But the author is not aware that any one has yet attempted to summarize in a brief, popular form, the record of political action. It has occurred, therefore, to the promoters of this Series that such a summary might prove interesting, if only by way of comparison.

These pages profess to give, then, a brief account of what men have *done*, not of what they have *thought*, in that important branch of human activity which we call Politics, or the Art of Government. But if it should be objected that what men do is really always the outcome, more or less perfect, of what they think, the answer is, that we recognize, for practical purposes, a distinction between what the world, in theory at least, believes to be best, and that which it actually succeeds in achieving. And a comparison of the two objects can hardly fail to be instructive.

To the other, and inevitable objection, that it is impossible, within the narrow limits of a popular sketch, to deal with such a subject as the History of Politics, the author

* "An Introduction to the History of the Science of Politics." By (Sir) Frederick Pollock. London, 1890. A new edition has recently been published.

will reply with the doctrine which, paradoxical as it may sound, is yet maintained by very able writers, that the greater the subject the smaller the space in which it can be treated. Readers who care to see parts of the subject worked out in greater detail may be referred to the author's "Law and Politics in the Middle Ages" (Murray 1898).

OXFORD, January, 1900.

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at home and abroad, belonging to the great Republic of Learning—scholars specially identified with various branches of knowledge.

Among English scholars who have kindly consented to help in the scheme may be mentioned the following :

The Right Hon. Leonard Courtney, M.P., will write on **The English Constitution**; Mr. Henry Bradley, Joint-Editor of the "New English Dictionary," on **The Making of English**; Dr. Hill, Master of Downing College, late Vice-Chancellor of the University of Cambridge, will contribute **An Introduction to the Study of Science**; Professor E. Jenks, Reader in Law to the University of Oxford, **A History of Politics**; Mr. Israel Gollancz, **An Introduction to Shakespeare**; The Very Rev. H. D. M. Spence, Dean of Gloucester, will deal with **The English Church**; Dr. Henry Sweet, **The History of Language**; Professor William Ramsay, F.R.S., etc., the Joint Discoverer of Argon, will write a text-book on **Modern Chemistry**; Mr. George R. Parkin, G.C.M.G., the great Imperialist, will write on **The British Empire**; Mr. Romesh C. Dutt, C.I.E., Lecturer in Indian History, University College, London, **The Civilisation of India**; Mr. Basil Worsfold, M.A. (Oxon.), Author of "The Principles of Criticism," will treat **Literary Criticism**; Mr. Edmund Gardner, M.A. (Camb.), Author of "Dante's Paradise," will prepare **A General Introduction to Dante**; Mr. L. D. Barnett, M.A. (Camb.), Assistant-Keeper of Oriental MSS.,

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A SHORT HISTORY OF POLITICS

INTRODUCTORY

CHAPTER I

Types of Society

Politics.—By *Politics* we mean the business of *Government:* that is to say, the control and management of people living together in a *society*. A *society*, again, is a group or mass of people, bound together by a certain common *principle* or *object*. A mere chance crowd is not a *society;* it has no definite object, it collects and disperses at the whim of the moment, its members recognize no duties toward one another. It has no history, no *organization*.

Society.—*Societies* are of many kinds. They may exist for purposes of religion, commercial profit, amusement, education, or a host of other objects. A good specimen of a religious society is, of course, an ordinary church congregation, or a missionary society; of a commercial society, an ordinary trading company; of an amusement society, a West-end club; of an educational society, an university or a college. And the management and organization of any such society may in strictness be considered a branch of *Politics*. But it is convenient to reserve the term *politics* for matters concerning one particular and very important class of societies, those communities, namely, which are not formed for any *special* or *limited* objects, but which have

grown up, almost spontaneously, as part of the general history of mankind, and which are concerned with its *general* interests. Men, as a rule, live in these communities, not because they choose to do so, but because they are born into them; and until quite recently, they were not allowed to change them at their pleasure. In their most advanced forms, we call these communities *States;* Great Britain, France, Holland, Germany, Spain, Russia, etc., are undoubtedly *States*. And these States are the proper subject matter of *Politics*, in the modern sense of the term. But, as we study their *history*, we become aware that these communities have gradually developed out of societies of quite another type, organized on different principles.

Modern social groups.—Now-a-days, the principle which binds together these communities of the modern type is the tie of *military allegiance*. In the States which practice conscription, or universal military service, this is very obvious. The most heinous political offence which a Frenchman or a German can commit is attempting to evade military service; or, possibly worse, taking part in military service against his own country. But even in Great Britain, where conscription is not practised, the tie is really the same. It is unquestionable that the Queen, through her Ministers, has the right, in case of necessity, to call upon everyone of her male subjects to render personal military service; and any British subject captured fighting against his country would be liable to suffer death as a traitor. In the older conditions of society, however, to which allusion has been made, the tie was not that of military allegiance, but *kinship*, which was at first, no doubt, based on actual blood relationship, but was afterwards extended by fictitious methods. To men living in such a community, the inclusion of strangers in blood would have appeared a monstrosity. The mere facts that these strangers were settled in the same neighbourhood, or carried on trade with the community in question, or even were willing to fight its battles, would

have seemed to such a community no arguments at all for admitting them to membership. The most conspicuous example in the world of a community organized on such principles is, of course, the Jews, who, in spite of their world-wide dispersal, still maintain intact their tribal organization, at least in theory. The same ideas were at the bottom of the famous struggle in early Roman history between the *patricians* * and the *plebeians;* and it is possible that something of the same kind may be unconsciously at the root of the trouble between the Boers and the Uitlanders in the Transvaal. The Welsh and the Irish before the Norman Conquest, the Scottish Highlanders two or three centuries ago, undoubtedly lived in communites of this type, which we may call *patriarchal*, or *tribal.*

Still older groups.—Until quite recently it was believed that this *patriarchal* type was the oldest type of human community. Speculators on the history of society started from the *patriarchal household*, and worked downwards to the modern State. But the brilliant discoveries of the last half century have revealed to us a still more primitive type of society which, so far as the writer knows, has never been described in a popular book, and which it takes some considerable effort to realize, even when it is stated in the simplest language. It is intensely interesting, both as adding another whole province to the domain of scientific history, and as revealing another step in the path by which man has moved onward and upward. At present too little is known of its details to warrant more than a brief description; but, thanks to the labours of devoted students, who have faced discomfort and hardship in order to examine this type of society in its few surviving examples, the outlines are now fairly clear. Unfortunately, it is hard to find a good name by which it may be distinguished. Its scientific name of *Totemistic* is too elaborate and technical for popu-

* A "patrician" is one who has a "pater," or chief of kindred.

lar use. Perhaps it will be best to call it the *savage* type; though it must be clearly understood that the term implies neither contempt nor blame. It merely signifies that the type in question is very *primitive* or *rudimentary*.

Here, then, we have our three historical types of human society—the *savage*, the *patriarchal*, and the *military* (or "political" in the modern sense). And it will be the business of "A Short History of Politics" to describe each of them in turn, beginning with the oldest, and, if possible, to point out the causes which led societies to abandon the older for the newer types. To do this, we shall not require to describe the histories of particular societies; that will be the task of other writers in the Series. But we shall endeavour to trace a *normal course* for the development of societies, a course which every community tends to follow, unless deflected from its natural path by special circumstances. It is the fashion to scoff at such attempts, and, doubtless, there is a danger in "general views." But there is, likewise, a danger in specialization; and a man who uses the microscope only loses the treasures revealed by the telescope. It is a wise ideal of study: to know something of everything, and everything of something.

Our plan.—But, if we start on a story of this kind, it is quite evident that we must have something in the nature of a *plan*. To plunge recklessly into the facts of universal history would be to invite failure. To what pathway shall we trust to bring us safely out of the forest?

Institutions.—There is a large part of the history of every community which *seems* to leave no permanent traces upon it. No doubt the results are there; but they are too vague and too subtle to be easily described. On the other hand, the effects of other parts of the community's history are plainly discernible in the permanent and visible results which they leave on the community itself. These results we call *institutions*: i. e., the machinery by which the business of the community is carried on. Perhaps it would be better

to call them *limbs* or *organs* of the community, for they resemble natural growths far more than artificial creations. They correspond in the *body social* with the *limbs* or *organs* of the *body natural:* i. e., with those instruments by which the business of the body — its absorption, digestion, defence, attack, etc., are carried on. And so we use the metaphor *organization*, to describe the development of institutions in the *body social*, or *community*.

Their relative importance.—These *institutions* may not really be the most important part of the body social, any more than the limbs and organs are the most important part of the body natural. The really important thing in each is that indefinable existence which we call *life*. But as no one has yet succeeded in explaining what *life* is, even in the natural body, still less in the social body, we shall be wiser to describe the *institutions* of society, to show, if we can, how they appeared, grew, and gradually changed, till they assumed the shape in which we know them now. Only, as every fully developed society has many kinds of *institutions*, political, industrial, religious, educational, and so on, with all of which it would be impossible to deal, we must remember that this is a book on *politics*, and deals only, or chiefly, with those institutions which are concerned directly with the business of *government*.

This, then, will be the plan of our work: to describe, as briefly and clearly as possible, *the origin and development of the institutions of government.*

TYPE I—SAVAGE SOCIETY

CHAPTER II

Savage Organization

Savages.—In spite of the constantly increasing intercourse between the most remote parts of the world, and the civilizing influences of commerce, there remain quite a considerable number of peoples who still live under primitive or savage conditions. Among them may be reckoned the Andamanese of the Bay of Bengal, the hill tribes of Madras, the Juangs of Orissa, the Veddahs of Ceylon, the Bushmen and Akkas of Africa, the Colorado Indians of North America, the Caribs of the centre and the Brazilians of the south, the Dyaks of Borneo, and the Eskimos of Greenland and Labrador. The Tasmanians of Van Diemen's Land were, until their recent extinction, perfect specimens of unadulterated savagery. But by far the most important examples, because the most remote from admixture and the most scientifically and recently studied, are the aborigines* of Australia, who, in the centre and north of that vast continent, still roam untouched and unreclaimed. Their numbers are considerable, and, though they are probably destined to disappear at no distant date, they are at present in full possession of their primitive organization, Owing to the praiseworthy efforts of a generation of students, pron-

*The reader is cautioned that the term "Australian Native" is by local custom reserved for the descendants of the white colonists, and is rarely extended to the "blackfellow."

nent among them being Mr. A. W. Howitt, the Rev. Lorimer Fison, Professor Baldwin Spencer and Mr. Gillen, who have braved the hardships of the Australian desert, and won their way into the confidence of the savages by consistent kindness, we are now able to form some tolerably correct ideas of savage life. Their accounts may be profitably supplemented by the studies of the late Mr. Lewis Morgan, who, in the Red Indians of America, found a people just emerging from savagery into the patriarchal stage of society, and whose book on "Ancient Society" will ultimately be recognized as one of the great scientific products of the nineteenth century.

Savage life.—The material side of Australian existence may be best described in a series of negatives. The savages understand neither the cultivation of the land nor the rearing of sheep and cattle. Their only domestic animal (if "domestic" it can be called) is the dog. They have no idea of dwellings more advanced than a rude bough hut; for the most part they take shelter in caves, and behind pieces of bark propped up against trees or rocks. They have no food but the scanty game of the "bush" or forest, such as the wallaby and the opossum, and the natural products of the earth. The art of fire-making, in a very primitive form, is known to them; but their notions of cooking are of the crudest. Still less have they the knowledge of working in metals, either by hammering or by melting. The recently adopted iron tomahawk is an article of barter, obtained from the enterprising traveller, in exchange for natural products. The indigenous weapons are the flint-headed spear and axe, and the wooden boomerang or throwing-stick. Australian legends go back to a time when even the use of stone knives was unknown, and operations, even on the human body, were performed with a charred stick. The "pitchi," or bark-basket, and the digging-stick of the women appear to be almost the only articles which can be classed as "tools." The clothing of the Australians may be described as purely ornamental. It consists, in fact, of certain decorations used in religious

ceremonies; in ordinary life they are stark naked. The appalling feature of this miserable existence, always bordering on starvation, is that it seems to have gone on during countless ages. The fauna and flora of Australia are, it is well known, of a thoroughly archaic type; the naturalist discovers in its forests and rivers forms which have long since been extinct in other parts of the world. And as there is no evidence whatever of any intercourse between Australia and other lands during the period of recorded history, as, in fact, Australia was, until three centuries ago, an unknown land, we can only suppose that the Australian has led his present life during thousands of years. His isolation has been, no doubt, the chief cause of his stagnation.

Savage institutions.—This view is entirely confirmed by a study of the non-material side of Australian life. Crude and primitive as it seems to us, its elaborateness of detail and complexity of ceremonial point to a history of great, but unrecorded, antiquity. When we consider the terror which all novelty has for the savage, especially in religious matters, we are bound to think that the elaborate ceremonies described in Messrs. Spencer's and Gillen's valuable book * must have taken centuries, perhaps even thousands of years, to work out. We may be very sure that no sudden change was made; but that only little by little was the elaborate ceremonial introduced. We cannot here do more than describe its leading features.

"Tribe" or "pack."—It is the custom to speak of the Australians and other savages as living in "tribes." But the term is most misleading; for the word "tribe" always suggests to us the notion of descent from a common ancestor, or, at any rate, of close blood relationship. Now there is, as we shall see, a most important stage in human progress, in which descent from a common ancestor plays a vital part in social organization. But the Australian "tribe"

* "The Native Tribes of Central Australia." London, 1899.

does not really play a very important part in savage life, at least on its social side. It appears to be mainly a group of people engaged in hunting together, a coöperative or communal society for the acquisition of food supply. It would really be better to call it the "pack;" for it far more resembles a hunting than a social organisation. All its members are entitled to a share in the proceeds of the day's chase, and, quite naturally, they camp and live together. But they are not sharply divided, for other purposes, from other "packs" living in the neighbourhood. On the contrary, they frequently mingle with them; and a social freemasonry extends over vast areas of the continent.

Totem group.—The real social unit of the Australians is not the "tribe," but the *totem group*. The word "*totem*" is not, of course, Australian;* but it is generally accepted as the name of an institution which is found almost universally among savages. The totem group is, primarily, a body of persons, distinguished by the sign of some natural object, such as an animal or tree, who may not intermarry with one another. In many cases, membership of the totem group is settled by certain rules of inheritance, generally through females. But among the Australians, new-born or (in some cases) unborn infants are allotted by the wise men to particular totems; and this arrangement has all the appearance of extreme antiquity, for the savage has no idea of principles; he requires hard and fast rules.

No marriage within the totem.—The Australian may not marry within his totem. "Snake may not marry snake. Emu may not marry emu." That is the first rule of savage social organization. Of its *origin* we have no knowledge; but there can be little doubt that its *object* was to prevent the marriage of near relations. Though the savage cannot argue on principles, he is capable of observing facts. And

*It sems to have been first used, in a slightly different form, by the Ojibway Indians of North America.

the evils of close inbreeding must, one would think, have ultimately forced themselves upon his notice. If so, we can understand the rule, "Snake may not marry snake." But this is conjecture.

Marriage with another totem.—The other side of the rule is equally startling. The savage may not marry within his totem, but he must marry into another totem specially fixed for him. More than this, he not only marries *into* the specified totem, but he marries the whole of the women of that totem in his own generation. Thus, all the men of the Snake totem are husbands of all the women of the Emu totem in the same generation; and, as a natural consequence, all the women of Snake totem are wives of all the men of Emu totem. Of course, it must not be supposed, that this condition of marital community really exists in practice. As a matter of fact, each Australian contents himself with one or two women from his marriage totem. But it is a fact that an Australian would see nothing wrong in a man living as the husband of any woman of his marriage totem, provided she were of his own generation. And if an Australian is travelling from "tribe" to "tribe," he will, as a matter of course, find a wife waiting for him in every "tribe" which contains women of his marriage totem. It is facts such as these which scandalized early missionaries, and often caused them to shut their eyes to what was really a most valuable object lesson in social history.

No unmarried people.—It will be obvious that, under these arrangements, there are no bachelors or spinsters among the Australian savages; but that, as Mr. Fison has well observed, marriage is, among them, "a natural state into which both parties are born."

Different generations.—It has been hinted before that some classification is necessary to distinguish the different degrees or generations within the totem group; and this is one of the objects of the mysterious *corroborees*, or ceremonial gatherings, which play so large a part in the life of

the savage. Though it is extremely difficult, owing to the unwillingness of savages to reveal the secrets of their rites, to ascertain precisely the details of these ceremonies, it is fairly clear that they serve more than one object. In the first place, as was frankly admitted by an Australian mystery man of repute, they effect the useful result of impressing the ordinary members of the totem group with a sense of the importance and power of the "Birraark" or sorcerers, usually old men, who conduct them. In the second, they undoubtedly seem to keep alive the legendary history of the totem group, and thus to bind its members closer together. The songs and dances of the ceremonies in many cases are supposed to represent great events which have occurred in the "Alcheringa," or distant past. Finally, at the ceremonies, often lasting for several days, the youths and maidens who have attained to maturity are initiated into some of the mysteries of the totem, often to the accompaniment of painful rites, such as circumcision and other laceration. It is possible that, on such occasions, the initiated are subjected to tattooing, with a view of establishing their identity, and of allotting them to a certain totem, and to a certain generation within that totem.

System of relationship. — By this, or some other artificial means, the curiously simple system of Australian relationship is constructed. All the women of his marriage totem in his generation are a man's wives; all their children are his children; all the members of his totem in the same generation are his brothers and sisters (whom he may not marry); all the members of his mother's totem are his parents (for descent is nearly always reckoned through females). Parent, child, brother and sister are thus the only relationships recognized. Rudimentary as this system appears to be, it is widely spread throughout the Malay archipelago, and Mr. Fison tells an amusing story of a missionary who, to increase his familiarity with his native converts, was made by the process of adoption the brother of his man-servant. Happenin

to meet the man's wife, the missionary pleasantly explained that he was now her brother. Whereupon the lady instantly corrected him by saying, "Oh no, you are not my brother, you are my husband." Mr. Morgan, indeed, who has studied the natives of Hawaii and Honolulu, as well as his own Red Indians, thinks that there are traces of still older systems, in which marriage between brothers and sisters, and even between lineal relations, was practised. Be this as it may, the Australian system prevails widely among savages, and even, with certain modifications, among some highly civilized people, e. g., the Chinese.

Totem questions. — Whether the totem serves any other purpose than that of prohibiting intermarriage of near relations, and what is the precise connection which the savages believe to exist between themselves and their totems, are much disputed questions. With regard to the latter, it has been suggested by recent observers that the Australian believes himself to be, in some mysterious way, the *offspring* of his totem. There can also be little doubt that, in some cases at least, the totem is an object of worship, a fetich which will deal destruction if the rule of the intermarriage is not rigidly observed. And, if this be so, we get an interesting glimpse at the rudiments of two of the most powerful factors in human progress—Religion and Law. It has been said that the progress of religious ideas follows three stages. In the first, Man worships some object entirely external to himself, a stone or an animal. In the second, he worships a human being like himself, usually one of his own ancestors. In the third, he has risen to the idea of a God who is both divine and human, unlike and distinct from himself, and yet like to and connected with himself. The Australian totem would answer to the first of these three stages. But it is somewhat significant to notice that the savage's view of his deity is usually that of a malevolent Power, dealing disease and death, and thirsting for human blood. It is to be feared that this view is largely the reflection of the savage's only

means of reasoning; viz., by experience. He sees that any one of his fellows who happens to be exceptionally strong and clever is apt to show his power by the exercise of cruelty. He transfers this character to his god.

Savage Law.—Closely connected with this view is the savage's rudimentary notion of Law. With him it is a purely negative idea, a list of things which are prohibited, or *taboo*. The origin of these prohibitions is often ludicrous, but they are generally found to be connected with the apprehension of danger. A man is walking along a path, and is struck by a falling branch. Instead of attributing the blow to natural causes, he assumes it to be the result of the anger of the Tree-Spirit, offended by his action in using the path. In the future, that path is *taboo*, or forbidden. A rude log bridge is made over a stream. It gives way beneath a passenger, and the man is drowned. That (the savage thinks) is the vengeance of the Water-Spirit, incensed at the insult offered by the existence of the bridge, which deprives him of his due number of victims. But the convenience of the bridge is so great that men are tempted to build it again. And then a cunning man suggests that, if a victim be sacrificed before the bridge is used, the Water-Spirit will be satisfied. And so some poor wretch is bound hand and foot and thrown into the torrent. Probably the bridge is better built this time, and does not break. The charm has worked. In such a way arises the notion of *sacrifice*, which has played such a ghastly part in history. Jacob Grimm, the great German scholar, found the practice of bridge sacrifices in use in northeastern Germany, happily only in a mock form, as late as the beginning of the present century. The practice of burying alive a victim in the foundations of a house, as a sacrifice to the Earth-Spirit, whose domain is being invaded, is widely spread in savage countries. Doubtless it had a similar origin.

Whether the totem bond also serves the purpose of uni ing its members together for offence and defence, is also

disputed question. There are traces of such a state of things, and its existence would certainly explain the development of a conspicuous feature of the second or patriarchal stage of society, the *blood-feud* group. But the relations of one group of savages to another are obscure and uncertain. Doubtless the members of a group, whether it be the "tribe" or hunting unit, or the totemistic marriage group, do not recognize any duties towards strangers. But their actual attitude is probably determined by the state of the food supply and the amount of elbow-room. If game is abundant, and hunting-grounds large in proportion to the population, distinct groups of savages may exist side by side in a given area without conflict. But if game is scarce, and the land thickly peopled (in the savage state the two things would probably go together), wars and murders are, probably, frequent. Even the revolting practice of cannibalism probably originated in hunger; though there are some races which seem unable to abandon it, even in times of plenty, and plausible reasons are invented for its continuance. But it is one of the surest laws of progress that, with each forward step, the same area is able to maintain an ever-increasing number of people. And so the temptations for war, or at least the excuses for war, are happily ever diminishing.

Summary.—It is a somewhat dark picture that we have had to draw of the life of primitive man. And indeed the noble savage, who passed his days in a sort of perpetual picnic, surrounded by his family, who sported in the flowery meads while he discoursed sweet music, was a last century fiction which did more credit to the hearts than to the heads of an unhistorical generation. The actual savage is usually a miserable, underfed and undersized creature, naked and shivering, houseless, in constant terror of dangers seen and unseen, with no family ties as we understand them, with no certain food supply, and no settled abode. And yet even the savage life contributes something to the total of civiliza-

tion. The savage hunter, dependent for his very existence on success in the chase, learns to endure hardships without murmuring, in the pursuit of his prey. Constantly on the lookout for danger, he develops powers of observation which are the admiration of his more civilized brother. He can trace the footsteps of an enemy in a thicket where a modern detective would declare it impossible to read any sign. He can foretell the approach of a storm from warnings which would escape a scientific weather prophet. He can hear sounds which to a civilized man are simply inaudible. He has infinite patience, provided only that the prospect of reward is palpable and immediate. These are no mean contributions to the store of civilization.

Type II—Patriarchal Society

CHAPTER III

Patriarchal Society in General

Distinguishing features.—We now approach the consideration of the second stage of social development, in which the binding ties are more distinctly marked, and the organization more perfect, than in the preceding stage. All patriarchal society is characterized by certain well-marked features, which distinguish it from earlier as well as from later types of society. These features are:

1. **Male kinship.**—We saw that, in the savage type of community, while something that might be called kinship prevailed, it was so arbitrary and artificial that it might be regarded as a superstition rather than a fact. So far as there was any recognition of blood relationship at all, it was relationship through women, not through men. But, in the patriarchal stage, paternity is the leading fact. Men are counted of kin because they are descended from the same male ancestor. Sometimes, no doubt, the relationship is fictitious rather than real; as when deficiencies in a family are made up by *adoption* or *fosterage*. But the very existence of such devices shows the importance attached to descent through males. Leaving for the present the question of how this important change came about, we notice another feature of patriarchal society closely connected with it.

2. **Permanent marriage.**—Without such an addition,

the first feature could hardly develop. In a state of society such as that of the Australians (*ante*, p. 10), no one could be certain who his father was. It is not until a woman becomes the wife of one man only that anything like certainty of fatherhood appears. But it must not be assumed that marriage, as we understand it, i. e., permanent union of one man with one woman, is a feature of all patriarchal society. On the other hand, *polygamy*, i. e., the marriage of one man to several women, is very characteristic of patriarchal society in its earlier stages. Only in its later developments does it approach to the modern system of marriage. But the existence of *polygamy* is no bar to the recognition of kinship through males; on the contrary, it renders it increasingly certain, by providing against a superfluity of unmarried women. Finally, a third essential feature of patriarchal society must be mentioned.

3. **Paternal authority.** — The principles upon which patriarchal society is conducted require, as we shall see, the existence of groups presided over and controlled by the well-nigh despotic authority of a male ancestor. This ancestor controls not only the business affairs of the group, but its religion and its conduct. He alone is responsible for it to the larger group of which it forms a part. The precise limits of this authority differ in different stages. In early Rome, as is well known, the *patria potestas* extended to all the descendants of a living ancestor, no matter how old they were, and even survived, in a modified form, over the female descendants after his death. Moreover, it comprised even the power of life and death, to say nothing of control and chastisement. In later forms of the patriarchal system this power becomes greatly modified, but an interesting record of Welsh society at the end of the patriarchal stage says of the *Mab*, or youth under fourteen: (He is) "at his father's platter, and his father lord over him, and he is to receive no punishment but that of his father, and he is not to possess a penny of his property during that time,

only in common with his father." In fact, for legal purposes, he has no separate existence.

Actual examples.—These are the universal features of society in the patriarchal stage, whether we look at it among Jewish tribes, or the early Greeks (e. g., the Homeric heroes) or Romans, or among the Arabs of the desert, or the Hindus and Mohammedans of northern India, or the Afghans of the frontier, or, better still, among our Teutonic forefathers in their German homes, or, perhaps best of all, among the branches of the Keltic race, the Welsh, the Irish and the Highland Scotch, with whom it lingered until a comparatively late period.

Two stages of patriarchal society. — But the study of patriarchal society has, until quite lately, been rendered very difficult by the practice, adopted by writers and speakers, of treating all patriarchal society as though it were of one kind. As a consequence, the picture has been confused, inconsistencies and difficulties have arisen, and impatient critics have been tempted to regard the patriarchal stage of society as an ingenious fiction.

Tribal. — As a matter of fact, a patient study of the evidence soon reveals the truth that patriarchal society falls into two subordinate stages, represented by two different groups or social units. The first of these may properly be called the *tribe*, the second the *clan* (or *sept*). The former (the *tribe*) is a large group, consisting of several hundred individuals, the fully qualified among whom certainly believe themselves to be descended from a common male ancestor, and are certainly bound together by the ties of kinship through males. But, in most cases, if not all, the common ancestor of the *tribe* is a fictitious person, invented to satisfy the etiquette which has now come to regard descent from a common male ancestor as the only true basis o society; and, as a matter of fact, the lawfully born children of all male members of the tribe are entitled to be classed as tribesmen.

Clannish.—The *clan*, on the other hand, is a much smaller body, consisting of some three or four generations only, in descent from a perfectly well-known male ancestor, and breaking up, automatically, into new clans or septs when the proper limits have been reached.

Mistaken (older) theory.—This distinction has been perceived by many writers, who, however, have failed to understand its true significance, and, consequently, its value as a help to the study of patriarchal society. They have been misled by the old theory, now definitely exploded, that the beginnings of society are to be found in the single *household*, or group of descendants of a living man. When such a house-father died, they say, his sons would set up households of similar pattern for themselves, and these households, remembering their relationship, would form a *clan;* when the clan grew so big that its actual relationships became obscure, it would become a *tribe.* To the Scottish historian, Mr. W. F. Skene, may be attributed the merit of having shown, by actual demonstration, that this account really reverses the historical order of things. The *tribe*, or larger unit, is the oldest; as it breaks up, *clans* are formed; and the break up of the clan system leaves as independent units the *households* formerly comprised within it. Finally, but not till long after patriarchal society has passed away, the household is dissolved, and the *individual* becomes the unit of society.

Supported by evidence of savage society.—This view, put forward by Mr. Skene in his "Celtic Scotland" (vol. iii), has been strengthened, in the most remarkable way, by the discoveries concerning the nature of savage society described in the preceding chapter. By these discoveries it has been proved that the earliest social group, so far from being a small household of a single man and his wives, is a large and loosely connected group or "pack," organized for matrimonial purposes on a very artificial plan, which altogether precludes the existence of the "single family." If it

were necessary, it could easily be shown that the origin of society in "single families" is inherently impossible; but it is sufficient to point out that the evidence is against it.

Origin of the distinction. — Although, however, the author acknowledges his debt to Mr. Skene for the establishment of the true relationship between the tribe and the clan, he is not aware that the *causes* of the appearance of either have been stated anywhere in brief form. He thinks it better, therefore, even at the risk of anticipating matters a little, to state clearly his own view, which is this: *that the domestication of animals converted the savage pack into the patriarchal tribe;* and *that the adoption of agriculture broke up the tribe into clans.*

Distinguishing marks of patriarchal society. — If this view be correct, obviously the first thing to do in attempting the story of patriarchal society is to consider the domestication of animals and its immediate results. But, as this will require a chapter to itself, it will be well once more to emphasize the distinction between patriarchal society, and modern or political society, in the strict sense, in order that the reader may realize that he is going to deal with ideas completely foreign to his own. Patriarchal society, then, is distinguished from modern society by four leading qualities.

Personal union. — 1. It is *personal*, not *territorial.* Although, as has been said, the basis of modern society is military allegiance, the great factor which determines that allegiance is residence in a fixed area. Doubtless, for certain purposes, a citizen of State A may reside in the territory of State B; yet he is looked upon as an *alien*, and he takes no part in the political life of State B. On the other hand, if a man qualifies as a citizen of a State by residence, we ask no questions about his blood or race. "Everyone born in France is a Frenchman," says the Code Napoléon; and, broadly speaking, that is the rule in civilized countries at the present day. But patriarchal society cares nothing for

residence or locality. To be a member of a particular group, a man must be of the blood of that group. If he is not, he may pass his whole life in its service, but he will not be a member. In fact, the whole group itself may move its quarters at any time without affecting its constitution in any way. At least, this is so in the earlier stages of patriarchal society.

Exclusiveness. — 2. It is *exclusive.* Modern society believes in large numbers. In spite of certain grumblings about "immigrant aliens," modern States are really anxious to increase their numbers as much as possible, because they know that an increase of numbers means an increase of *wealth* and of *fighting-power.* To a community in the patriarchal stage, an Immigration Bureau would appear to be a monstrosity. To its members the immigrant is simply a thief, who comes to stint the pasture and the corn land; a heathen, who will introduce strange customs and worships. If he is admitted, he is admitted only as a *serf* or *slave.*

Communal character. — 3. It is *communal.* In a modern State, the supreme authority deals directly with each individual. Of course there are intermediate authorities, but they act only as subordinates or delegates of the supreme power, which can set them aside. But, in patriarchal society, each man is a member of a small group, which is itself a member of a larger group, and so on. And each man is responsible *only* to the head of his immediate group — the son, wife or slave to the housefather, the housefather to the head of his clan, the head of the clan to the tribal chief. The practical results of this principle are vitally important, as we shall see later on.

No competition. — 4. It is *non-competitive.* We are accustomed to a state of society in which each man works at what he thinks best, and in the way he thinks best. Subject to certain laws, mostly of a police character, each man "does as he likes." If a farmer thinks he can get a better crop by sowing earlier than his neighbours, he does so. If

a carpenter thinks he can make a better box by using nails where screws have hitherto been employed, he does so. If a draper thinks he can attract customers by selling tea, he does so. But patriarchal society would have looked on such practices with horror. Its life was regulated by fixed *custom*, to deviate from which was impiety. How this idea arose, and how it gradually disappeared, we must inquire hereafter. At present we must simply bear it in mind in thinking of patriarchal society. In patriarchal society, everyone found his duties in life prescribed for him ; and not only his duties, but the way in which he should perform them. Any deviation from customary rules was looked upon with disfavour.

We now come to deal with the great discovery which made patriarchal society possible and inevitable.

CHAPTER IV

The Domestication of Animals

THE art of taming wild animals and making them serve the purposes of man is one of the great discoveries of the world. Just as it is quite certain that there are some races, e. g., the Australians, who have never acquired it, so it is equally certain that many other races have learnt it, with results of the greatest importance. But as to the man or men who introduced it, we have no knowledge, except through vague and obviously untrustworthy tradition. Like many of the greatest benefactors of the human race, they remain anonymous. In all probability, the discovery was made independently by many different races, under combinations of favourable circumstances.

Origin of domestication. — But, if we cannot speak with confidence of names and dates in the matter, we can make certain tolerably shrewd guesses as to the way in which domestication of animals came about. We start with the fact that the most valuable of the world's domestic animals, the sheep, horse, ox, goat, etc., are known to exist, or to have existed, in a wild state. It is practically impossible to suppose that these wild animals are (except in rare cases) the result of the escape from captivity of tame animals. It follows, therefore, that the start which a pack of savages could obtain in the matter of domestication would depend upon the character of the wild animals in its neighbourhood. For it is fairly obvious by this time that many wild animals are not suitable for taming. Thus, it is hardl

possible that the lion, tiger or bear will ever really become domestic animals, in spite of the fact that their strength and endurance would prove valuable qualities if they could be used. And so some peoples may have remained utterly savage, because of the fact that their country does not produce animals capable of domestication. Again, some races, like the Eskimos, appear to have had only the wild ancestors of the dog and the reindeer, and thus to have been very limited in their opportunities. Other races have been able to tame the sheep, one of the most valuable aids to civilization; others, again, have had the still more valuable ox.

Superfluity of game.— But still the question remains — How was the process of domestication discovered? Here, again, we can only proceed by speculation; but a most valuable account of his experiences in Southern Africa (Damara Land), published by the late Sir Francis Galton in the middle of the century, affords us most suggestive hints.*

Two of the most striking features of the savage character are *recklessness* and *greed*. Being quite unable to make provision for the future, or even to realize the wants of the future, the savage consumes in disgusting orgies the produce of a successful hunt. A stroke of luck, such as the capture of a big herd of game, simply means an opportunity for gorging. But even the savage capacity for food has its limits; and, in exceptionally good seasons, there is a superfluity of game. A civilized man would strain every nerve to store the surplus away against future wants. The savage simply wastes it; partly because he knows that meat will not keep, partly because he cannot realize the needs of the future. The "pemmican" or sun-dried meat of the Red Indian, and his "caches," or buried hoards, are the limits of the savage capacity for storing up against a rainy day.

Pets.— But, if the savage is reckless and greedy, he is often affectionate and playful. If he has had as much food

*"Narrative of an Explorer in Tropical South Africa." London, 1853.

as he can eat, he will amuse himself by playing with his captives, instead of killing them. At first, no doubt, there is a good deal of the cat and the mouse in the relationship; but, in time, the savage comes positively to love his captives, and even to resist the pangs of hunger rather than kill them. In other words, the earliest domestic animals were *pets;* preserved, not with a view of profit, but for sport or amusement. And it is most important to observe that animals so selected would naturally be the handsomest and finest of the catch, whose appearance would delight the eye. The history of the process is neatly summed up in the two meanings of the English verb "to like." In the primitive sense, "to like" means "to like to eat;" later on, it means "to like to keep," or have by one. "I like mutton," or, "I like my dog." *

Food supply.— But, of course, feelings of affection would be bound to give way in the long run to feelings of hunger. And then the tame animals would be slaughtered for food. And so it would ultimately dawn on the savage that the keeping of pets was really a profitable business, because it afforded some protection against *famine.* Gradually it would become more and more common. Finally, the savage would learn by experience that, even without destroying them, his pets could be put to valuable use. Thus the wool of sheep, the hair of goats, the milk of cows, would be to a savage like a gift from an unknown Power. Still more, the young of his captives would add to his delight in his possessions; and his forest lore, his keen observation of the habits of animals in their wild condition, would come in most usefully for his new occupation as a breeder and keeper of flocks and herds. But, when he had got thus far, the savage would have ceased to be a savage; he would have become a *pastoralist.*

*It has been suggested that the reverence of the savage for his totem may also have had something to do with the preservation of animals.

Results of change.—We must now notice the chief effects upon social arrangements produced by the adoption of pastoral pursuits.

Kinship through males.—In the first place, it is not very difficult to see how it would lead to the establishment of kinship through males. In the savage, or hunting stage, the hunting was chiefly done by the men; the women, though in many cases they took part in the chase, being employed chiefly in carrying weapons, setting traps, and other subordinate offices. Their real tasks were to mind camp, dress the food, and, what has always and inevitably been woman's work, to look after the children. Quite naturally, though not, perhaps, very justly, the superfluous animals which were left over after the hunger of the camp had been satisfied, were looked upon as connected in some special way with the man who had captured them. And he, therefore, would have the training and management of them; and, in course of time, they would come to be looked upon as his *property*. In speculations as to the origin of the important institution of *property*, it is often said that capture is the first title to ownership. This is hardly true; for accounts of savage societies generally show that the captured animals, *so far as they are required for food*, are treated as the common stock of the camp. But, when the claims of hunger have been satisfied, the actual captors are allowed to retain the remainder as *pets;* and, as they become fonder and fonder of them, they resent more and more any interference with them by other people. It is just what happens with children, who are, in many respects, very like savages. What a child thinks of is not, *how the toys came there*, but *who uses them.* "I always play with this doll, so it is mine." That is the feeling of the savage for his ox or sheep.

Pastoral pursuits.—And then, as all the advantages of the rearing of animals come to be realized, the savage "pack" gradually changes into a society of shepherds or herdsmen, in which the men are engaged in tending cattle,

sheep, or goats, while to the women fall the subordinate offices of spinning the wool, milking the cows and goats, and making the butter and cheese. The men drive the flocks to pasture and water, regulate the breeding, guard the folds against enemies, decide which of the animals shall be killed for food, and break in the beasts of burden.

Value of labour.— But in these tasks it gradually becomes apparent to the men that *labour* is a valuable thing. A man who has been very successful in cattle-rearing requires a number of "hands" to keep his herds in order. Besides the domestic labour performed by women, he requires the outdoor labour of men, to prevent the cattle from straying or being stolen, to drive them to pasture in the morning and bring them back at night. To this demand for labour we probably owe two of the great institutions of the pastoral age: *permanent marriage* and *slavery*. There is really, as we shall see, nothing out of place in taking these two together, odd as the connection may sound to modern ears.

Permanent marriage has been alluded to before as one of the essential features of patriarchal society. By superficial writers its appearance is often attributed to some vague improvement in morality or taste. Unhappily, the facts point to a much less exalted origin; viz., *the desire of the man to secure for himself exclusively the labour of the woman and her offspring*. If the change had come about from exalted ideas of morality, we should probably have found two features in the new system—(1) equality of numbers between the man and the woman; (2) free consent to the marriage on both sides. It is notorious that just the opposite are the facts of the patriarchal system, at any rate at its earlier stages. Polygamy, or plurality of wives, is the rule; and, while the husband is not at all particular about the conduct of his wife with other men, he is intensely strict about appropriating the whole of her labour; and all her offspring, no matter who is the real father, belong to him.

Again, the ancient forms of marriage; viz., marriage by *capture* and marriage by *purchase*, point irresistibly to the conclusion that the woman had little or no voice in the matter. In the case of marriage by *capture*, the husband carried off his wife by force from a neighbouring tribe; and, long after the reality of this practice has disappeared, it survives, as is well known, in a fictitious form all over the world. It is considered barely decent for the girl to come to the marriage without a show of force. Even in polite modern society the "best man" is said to be a survival of the friends who went with the bridegroom in ancient days to help him to carry off his bride, while the bridesmaids are the lady's companions, who attempted to defend her from the audacious robber, and the wedding tour is a survival of the flight from the angry relatives of the bride. In the more peaceful form of marriage by *purchase*, the lady has become an article of marketable value, whose price is paid, usually in cattle or sheep, to her relatives or owners. It is a refinement of modern days that the "bride-price" should be settled on the lady herself, or contributed, in the form of marriage gifts, to stock the future home. In ancient times it was paid, if not in hard cash, at any rate in solid cattle, to the damsel's relatives, who, by the marriage, lost the value of her services. Jacob, we know, paid for his wives by labour; but this was probably an exception. In patriarchal society, the father of a round dozen of strong and well-favoured daughters is a rich man.

Slavery arises from the practice of keeping alive captives taken in war, instead of putting them to death. In savage days, wars are usually the result of scarcity of food, and, as was pointed out previously (p. 14), result in the killing and eating of members of a stranger "pack." But, with the increasing certainty of food supply, resulting among other benefits from pastoral pursuits, cannibalism becomes unnecessary, and captives are carefully kept alive, in order that they may labour for their captors. It may sound odd to

speak of slavery as a beneficent institution, but one of the first lessons which the student of history has to learn is, that things which *to us now* seem very wicked may have really been *at one time* improvements on something much worse. Slavery is an ugly thing, but it is better than cannibalism. Again, however, we notice that the upward step was due, not to exalted morality, but to practical convenience. Morality is the result, not the cause, of social amelioration.

The pastoral tribe.—Thus we have seen that pastoral pursuits have converted the savage "pack," with its loose system of association and marriage, into the pastoral *tribe*, with its fixed marriages and its relationship based strictly on kinship through males. The woman leaves her own tribe or household, and becomes a member of that of her husband. The clumsy expedients of capture and purchase are resorted to in order to continue the instinct, developed (as we have seen) in the savage period, which forbids intermarriage between near relations. The precise distance of relationship required probably settles whether the woman is to be captured from a neighbouring tribe or bought from another household of the same tribe. And this rule probably varies according to circumstances. But in either case the husband is the sole authority in the household. His wives, children, slaves and animals are under his absolute control, and all stand pretty much on the same footing.

Mode of transition.—The precise steps in the momentous change from the loose marital relationship of savages to the definite (if somewhat brutal) institution of the pastoral household are very hard to trace. The process has been very ingeniously suggested by the late Mr. Robertson Smith in his "Kinship and Marriage in Early Arabia," where the author points out the clear traces among the patriarchal Arabs of the former existence of a savage state of society. It is there suggested that the existence of a long condition of war and disturbance would have had a similar result, by drawing together the fighting males into groups for military

purposes, each male jealously guarding his own women and children. But there are inseparable difficulties in the way of such an explanation. The patriarchal household would have been the last thing that a warrior would have cared to encumber himself with; and times of military license are hardly times in which the permanence of the marriage tie is developed. On the whole, it seems tolerably certain that the budding institution of *property* has been the main factor in creating the patriarchal tribe and family. Our very word "family" is said to be derived from an old Italian word *famel*, meaning "slave."

Other results of pastoral pursuits.—To conclude this chapter, we may just hastily mention one or two other important contributions made to the progress of civilization by the domestication of animals. Obviously it would tend largely to increase *numbers* and to improve *physique*, by the greater abundance and regularity of food supply and the increase of clothing and shelter. But also it would have the important effect of *differentiating* in strength and importance one tribe from another, and one family from another. Savages are, in the main, very much alike; one savage tribe is a good deal like another. But circumstances of climate, and skill in breeding and rearing animals, would soon produce differences in the pastoral age. One tribe would become wealthy, while another would remain poor. Even in the same tribe some households would become richer than others, according as, by superior strength or skill, one housefather acquired more cattle than another. Early Irish society was elaborately organized into classes, which distinguished between the ordinary freemen (*Nemé*) and the rich cattle owners (*Boaire*), and between the various degrees of wealth among the latter. And the primitive uniformity of membership ultimately became quite broken up by the practice, adopted by the rich *Boaire*, of lending their superfluous cattle to the poorer tribesmen in return for *rents* or regular payments, as well as *feastings* or occasional enter-

tainments of the cattle-owner, who visited his borrower from time to time, no doubt under the pretence of seeing how his cattle were getting on.

New Ideas.—Once more, the domestication of animals is responsible for two very important ideas, without which civilized society could not hold together in its present form. These are the ideas of *profit* and *capital.* The former is now looked upon as the net *gain* in any commercial transaction. Originally it was the offspring of domestic animals. The household which had a dozen goats in one year might find itself, without any further captures, in possession of twenty in the following. The idea gradually spread, and all modern industry is based on it. Again, even if there were no births in his flock, the pastoralist would find that, at any rate for a time, he could go on living on the produce of his animals, the milk of goats and cows, the wool of sheep, without reducing his numbers. This discovery would tend very powerfully to induce him to *save* his animals, i. e., not to slaughter them, in order that they might produce constant *income.* That is precisely what we mean by the term *capital.* It is wealth *saved* to produce future wealth. But there was no room for these great ideas in savage society. They are the direct outcome of pastoral pursuits. So we see that the lazy and overfed savage, who amused himself by taming and petting his superfluous captive animals, was really beginning a revolution in the world's history. It is rather curious that the power of taming new animals seems to be almost extinct among civilized men. Is this because all the tamable animals have been tamed, or because civilized man has become so unlike wild animals that he has lost the art of understanding them?

CHAPTER V

Tribal Organization

WE now come to deal with the way in which society organizes itself to satisfy the requirements of this pastoral existence which we have tried to describe. And, in dealing with this subject, by preference we will borrow our illustrations from the Keltic peoples of the British Islands, who, until comparatively recent times, occupied the patriarchal stage, and from those subjects of our Indian Empire, such as the natives of the Panjab, who, even at the present day, afford most valuable opportunities for the study of patriarchal institutions. Occasionally we may refer to other examples, such as the Homeric Greeks, the ancient Romans, the Maoris of New Zealand and the Arabs, in order to broaden our horizon, and to realize how widely spread is this phase of development. But we shall gain in vividness by keeping close to one model.

The tribe.—In society of the patriarchal type the important group is, as we have said, the *tribe*, or body of people believing themselves to be descended strictly in the male line from some far-off ancestor. We say "believing themselves," advisedly; for if our account of the origin of the *tribe* be correct, the rule of male succession only developed after the group had been in existence, perhaps for thousands of years. But the intense belief in the existence from the beginning of the so-called *agnatic** rule

* The term is derived from Roman Law, which contrasted *agnatio*, connection through male ancestors, with *cognatio* or ordinary blood relationship.

succession, is evidenced by the amusing attempts of the tribesmen themselves to discover a single male ancestor, or, as he is called by scientific writers, an *eponym*, for their tribe. Thus, we find the chroniclers of British history deriving the descent of their tribe from Brutus of Troy, the grandson of Æneas; the Cymry of Strathclyde are, in an early document, said to be all descended from one Coel Hen, whose name is supposed to survive in various place names in Ayrshire; each of the Teutonic tribes which settled in Britain alleged its descent from the Scandinavian hero Odin; the Beluchis of the Panjab profess to be the offspring of Mir Hamzah, an uncle of the prophet Mahomet; while the Pathans of the same neighbourhood claim descent from Saul, the first king of Israel!

Membership of the tribe.—Such being the importance attached to male kinship, it is not surprising to discover that, in tribal society, no one can be regarded as a full member of the tribe unless he is the lawful child of a full tribesman. Such a person is alone entitled, as of right, to a share in the tribal possessions; he alone can take part in the religious ceremonies of the tribe. But, as a matter of fact, all patriarchal tribes are found to have living among them considerable numbers of *strangers*, who, though separated by a great gulf from the full tribesmen, yet rank in various degrees of social importance. There are, for example, the mere "strangers," the *Fuidhir* (as the Irish called them), the *Allluds* (as they are called by the Welsh Laws), who appear to be broken men from other tribes, adopted or protected on more or less hospitable terms. Along with these, probably, go the offspring of the tribeswomen through marriages with such resident strangers. Occasionally, in return for very great services, or after a residence of many generations, such persons are fully adopted into the tribe.

Serfs.—Then there were the various degrees of *serfs* or *bondmen;* for, as we have said, pastoral society was anxious

to secure cheap labour. These were, probably, the results of forays upon neighbouring tribes, or people whom we should call "convicts," who had become such through failure to pay compensation for injuries committed by them, according to the system to be afterwards explained. These servile persons were either employed as herdsmen or (somewhat later) as farm-labourers, such as the *Sencleithe* of Ireland, or the *Tæogs* of Wales; or they were treated as domestic slaves (*Bothachs* or *Caeths*).

Ranks within the tribe.—But it must not be supposed that, even among the full tribesmen, equality of ranks was the rule. True it is that every free tribesman was entitled to his share of the grazing land, to his hunting in the waste, to his oath of kindred (i. e., the protection of his immediate relatives), and to his armour. But it is probable, as we have said (p. 26), that, from the very first, the chief wealth of the tribe; viz., its cattle and sheep, its camels and goats, were looked upon as individual property; and the tribesman who was not fortunate enough to inherit or to capture a stock of these was in a somewhat unenviable position. As the Irish Laws put it, he was only a *Fer Midba*, or "inferior man," not a *Boaire*, or "lord of cattle." In fact, he was very much in the position of the modern "free" workman, who often finds that his boasted freedom means freedom to starve.

The nobles.—In this state of things he very frequently resorted to an expedient which is intensely interesting, as being the earliest development of an institution which was destined to play such a large part in the world's history: the institution of *landlordism*. Only it was not, in these early days, applied to *land*, which was not regarded as capable of appropriation by individuals, but to *cattle*. The rich *Boaire* loaned some of his cattle to the poor *Fer Midba*, who agreed to take some of them for a certain period, and to pay an annual *Bestigi* or food rent, being part of the produce, and to feast the *Boaire* and his friends a certain number of times

in the year. Having the right to feed a certain number of cattle on the tribal land, the borrower of cattle (or *Ceile*, as he was called) could probably make enough to live on out of the transaction. If he had some cattle of his own, he was called a *Saer Ceile*, or free tenant; but, if his whole herd was borrowed, he became the *Daer Ceile* of the owner; not, technically, an unfree man, but a man in a very inferior position.

Degrees of nobility.—Among the rich men, or nobles, of the tribe, there were also many social degrees, according to their wealth; these, however, are not of great importance, except in relation to the system of blood fines, of which we shall say something later.

Officials of the tribe.—But, besides these divisions into free and unfree, nobles and ordinary freemen, the tribe had a very important official organization.

1. **The Chief,** who was understood to represent the founder of the tribe, and who was usually the oldest male in a particular branch. Messrs. Spencer and Gillen have pointed out that among the Australians, whom we have taken as our types of *savage* society, there is nothing that can be called a chieftainship, though there are, doubtless, often certain individuals who, from their physical strength or supposed wisdom, have great influence. But in patriarchal society, there is always a representative of the tribe. The Irish call him a *Ri*, the Welsh a *Pen*, the Scotch a *Mormacr*, the Teutonic tribes a *Cyning* (whence our "king"), the Bilúches a *Tumandár*, the Pathans a *Khan*. He was hereditary, not in our sense, but in the sense that the eldest male in the privileged line was entitled to the office, unless disqualified by feebleness or disease. The Welsh Laws picturesquely describe him as "the oldest efficient man in the kindred to the ninth descent, and a chief of household;" and they go on to enumerate his duties thus:—

(*a*) He must speak on behalf of his kin, and be listened to;

(*b*) He must fight on behalf of his kin, and be feared;

(*c*) He must give security on behalf of his kin, and be accepted.

In other words, he must be eloquent, brave, and honest; and if a candidate for the position did not manifest these qualities he might be set aside. This is probably all that is meant by certain writers, when they say that the tribal chief is "elective." Of course it was long before the days of votes and ballot-boxes.

But, by an arrangement which shows a good deal of wisdom, some patriarchal tribes do not wait until the death of a chief before accepting his successor. Amongst many of them there is—

2. **An Heir-Apparent,** called by the Irish the *Tanist*, by the Welsh the *Teisbanteuleu*, who is the person who will next succeed to the chieftainship, in the ordinary way, after the death of the existing chief. After the break-up of the tribes into *clans* or *septs* in Ireland, this practice continued in the smaller bodies; and it was its existence which did more than anything else to scandalize the Elizabethan statesmen who tried to bring the Irish to English notions. In Russia, the institution lingered for a long while in the person of the *Veliki Kniaz*, or *Grand Prince*, the eldest male of the house of Rurik, the chief of the Varangian or Norman tribe which conquered Russia in the ninth century. Still longer it continued to be a feature of the Holy Roman Empire, which, in addition to its head, or Emperor, had of right also his destined successor, the "King of the Romans." During the life-time of the chief, the heir-apparant acted as his deputy, and was, so to speak, "learning the business."

3. **The Champion.**—This person, called among the Irish and Scotch a *Toisech*, among the Welsh a *Dialwr* (or "avenger"), among the Teutonic tribes a *Heretoch* (or "host-leader"), is very interesting, both on account of his ultimate destiny, as well as because he is an early instance of what is called "specialization of functions." Originally, as

we have seen, the hereditary chief was also the head warrior of the tribe. But, as the chief was hereditary, it would often happen, in spite of the power of rejection claimed by the tribe, that the chief was unsuccessful as an actual warrior. He might be wise and venerable, much respected and loved, but no soldier. In times of stress the tribe would naturally turn to one of its members who had shown great bravery and skill in fighting, and, by a sort of informal election, appoint him to lead them in battle, much as the Romans did, at a much later stage, with their *Dictator*. Apparently, after this event had occurred two or three times, the champion or head warrior became a recognized *institution*.

All these three officials, the Chief, the Heir-Apparent, and the Champion, seem to have been provided for by the endowment of special rights in the tribal land, by an extra share of the *booty* captured by the tribe on its plundering expeditions, and by customary presents made on certain days of the year by the members of their tribes. The first of these three privileges is of special importance in the History of Politics.

4. **The Council,** or group of seniors, called by the Irish *Brehons*, by the Welsh *Henadwr*, by the Teutons *Rachimburgs*, by the Mahommedan tribes *Jirgah*, and by the Hindus *Panchâyat*. This seems to have been a body of persons gradually formed from the heads of the subordinate groups in the tribe, by a process which we shall have to explain in dealing with the formation of *clans*. Its great function was to *record the custom* of the tribe, and regulate its ceremonies and religion. It was, obviously, a most necessary institution after the tribe had become numerous, and in days which could boast no written records. It is most interesting as the germ of future constitutional government, and may be regarded, historically, as the mother of Law Courts, Cabinets, and even of Parliaments. Sometimes, as amongst the Welsh, and some of the Teutonic tribes, it seems to have consisted of a small number (seven); at others it was ob-

viously larger, and may have consisted of all the heads of households within the tribe. Later on, its members appear to have developed individual functions, as pedigree-keepers (called by the Irish and Scotch *Synnachies*), priests (possibly, among the Welsh, *Druids*), medicine men, and so on. But it is with the elders as a body or *council*, that we are most concerned: and the mention of it brings us to the consideration of two closely connected topics; viz., Tribal Religion and Tribal Law, with an account of which this chapter may fitly end.

Tribal Religion is a striking testimony to the truth of the view previously quoted (p. 12), that the second stage of religious thought is that in which Man worships as his gods beings who are, or have been, men like himself, who are, in fact, his deceased ancestors. *Ancestor worship*, which, even at the present day, is the religion of multitudes of the human race, especially in the East, seems to arise from two sources. The one is a profound belief in the existence of the spirit world, in which the dead live and move as in life; and which may, therefore, be fairly claimed as a crude form of belief in the immortality of the soul. The second is the profound deference to parental authority rendered during life to the head of the patriarchal household, and which, after his death, takes the form of ceremonial worship. In its more cruel shape, this worship is celebrated with *sacrifices*, either by way of vengeance upon the men who have caused, or are supposed to have caused, the death of the ancestor, or by way of providing him with comforts in the spirit-land. In its more refined form, it is a continuance of *domestic worship*, as exhibited, for example, in the picturesque ceremonial of the offerings of cake and water, the sacrificial meal and the commemoration hymns, of the Code of Manu and other Hindu rituals. The centre of ancestor worship is the *family hearth*, with its sacred fire and solemn festivities; and its continued practice is thus calculated to keep alive, in the most vivid way, that spirit of *kinship* which is the very

essence of patriarchal society. It may, perhaps, be doubted whether ancestor worship plays quite such an important part in the daily life of the Hindu as the Sacred Books would lead us to believe; but it is undoubted that its existence accounts for much that is otherwise obscure, not only in Oriental Society, but in the history of the early Greeks and Romans. Readers who are interested in pursuing this line of thought may be advised to consult the late Mr. Fustel de Coulanges' famous book "La Cité Antique;" here it will be sufficient to state, by way of contrast, two or three of the leading features in which the ancestor worship of patriarchal society differs from religion as understood by the modern world.

1. **It is not proselytizing.**—The great religions of the modern world—Christianity, Mohammedanism, even Buddhism—profess to be of universal application, and their missionaries seek to make converts in all lands. To an ancestor worshipper such a course would appear not merely ridiculous, but positively treacherous. His gods are for him and his kindred alone; he looks to them for favour and protection, as one of their devout descendants. How could strangers possibly have any share in their worship? As a consequence, the patriarchal man who wandered away from his kindred found himself not only among strange people, but among strange gods. To him, expulsion from the tribe meant the break up of religious as well as social ties. An Englishman of the present day who settles in France, Germany, Italy or Spain, enters a place of worship, and finds the same God worshipped, under slightly different forms and in a different tongue (unless he be a Catholic), but by worshippers of the same faith. To an ancestor worshipper, such an experience would seem incredible.

2. **It is not theological.**—That is to say, it does not profess to account for the origin and constitution of the universe. No doubt the patriarchal man had certain crude ways of explaining the existence of the world and its con

tents. But these were not part of his *religion*. It was not until the later speculative spirit, introduced into Europe by the Greeks, attempted to link intellectual belief with religious duty, that the modern kind of religion began. Even then, as we learn from more than one passage in the New Testament,* concerning "meats offered to idols," some of the early Christian converts considered it quite possible to combine an intellectual acceptance of Christianity with a continuance of their ancestral rites. Ancestor worship, in fact, was a purely practical religion, imposing a code of duties on its followers, but making no demands upon their belief.

3. **It is secret.**—The view that their ancestors belonged to them alone naturally made the tribesmen very jealous of strangers acquiring any knowledge of their forms of worship. Consequently, the most rigid care was taken by each tribe, and, after the tribe split up into sections, by each section, to prevent a knowledge of these ceremonies leaking out; and many of the most dramatic stories of ancient history turn upon the vengeance taken upon interlopers who had succeeded in penetrating the mysteries of religious celebrations. In each household, the particulars of its sacred rites were passed on from father to son in the greatest secrecy. The secrets of the tribe were in the custody of the elders or wise men, who, in somewhat more advanced times, formed themselves into hereditary bodies, or *colleges*, for their preservation and practice. The very existence of the tribe was believed to depend upon the safeguarding of these mysteries; and, if a disaster happened, one of the readiest suggestions to account for the mishap was that the ancestors were offended, because "strange fire" had been offered on their altar.

Tribal Law.—Closely connected with Tribal Religion, in fact originally part of it, was Tribal Law. One of the direct results of ancestor worship was a religious adherence

*E. g., Acts xv. 29.

to ancestral custom: that is, to the practices observed in life by the revered ancestors. And this was the main idea of *Law*, as conceived by patriarchal society. The notion of Law as the command of an absolute ruler, whether an individual or a body, was yet far in the future. Law was not a thing to be *made*, but a thing to be *discovered*. The old savage notion of *taboo*, which, as we saw, was purely negative, had been largely superseded by the positive notion of *custom*. What was customary was right, what was uncustomary was wrong. The desperate tenacity with which patriarchal society clung to a practice, merely because it was a practice, is illustrated, among hundreds of other examples, by the well-known Roman custom of examining the entrails of victims to ascertain the prospects of an expedition. Originally, no doubt, it was a practical expedient adopted by the nomad tribes from which the Romans were descended, in their wanderings through unknown country. To test the fitness for food of the new herbs with which they came into contact, they caused a few of their cattle and sheep to eat them, and then, by a sort of rude *post-mortem*, judged of the result. The real origin of customs is often very hard, however, to discover. Sometimes it seems to have been mere accident. The ingenious account of the origin of roast sucking pig, given by Charles Lamb in his well-known Essay, though intended by him as a joke, may really be a brilliant guess at the truth. In other cases, no doubt, an exceptionally able man deliberately made an innovation, which was afterwards copied by others, as it was found to be useful. But such enterprise must have been very dangerous. The first man who drank the milk of his cow probably paid for his luxury with his life. In patriarchal society, innovation and crime are almost co-incident. So little, indeed, is deliberate departure from custom anticipated, that there seems to be no regular punishment for it. The chief or elders will declare the custom; that is, or ought to be, sufficient. But if an offender persists in his impiety, the outraged community will

banish him from its ranks. In the expressive language of the Welsh Laws, he will be a "kin-shattered man," an outlaw, in fact. If the tribe lives near the sea he will probably be set adrift on an open raft; this was the method with the South Welsh. Other codes speak of turning the offender "into the forest." In either case, the result would be much the same.

The blood feud.—For injuries to individual fellow-tribesmen, the universal remedy was the *lex talionis*, administered by the *blood feud*. Barbarous as such an institution seems to us, it is probably one of the most important steps ever taken towards civilization. A man is killed. Instead of the murder producing indiscriminate slaughter, it gives rise to an ordered scheme of vengeance conducted by the immediate relatives of the slain man against the murderer and his immediate relatives. If there be any doubt about the facts, certain rough tests are applied, which to us would appear very unsatisfactory. The accused brings a certain number of his relatives to swear to his innocence, or some rude sort of ordeal is used.* If the accused is deemed guilty, the feud goes on, unhappily for a very long time.

Blood fines.—A great step further is taken, when, for the right of vengeance is substituted the payment of compensation. The circumstances of pastoral society permit of this. The existence of cattle and sheep form a *standard of value*, by which the life of a man can be measured. Starting with the simple idea that a man is worth what he owns, and taking the ordinary free tribesman as the unit, the tribe sets up an elaborate scale of *money fines* (the *cric* of the Irish, the *galanas* of the Welsh, the *cro* of the Scotch, the *wer* of the Teutons), carefully graduated according to (1) the importance of the injured party, (2) the extent of the damage. Apparently,

*One of these probably survives, in backward countries, to the present day. Each of the mourners touches the body at a funeral. The ancient belief was that if the touch was that of the murderer the corpse would bleed afresh.

the proceedings begin as before. The marks on the dead man's body are examined, the bloody weapon is traced, the trail of the stolen cattle is followed until it leads to the thief's hut; and then, just as the *feud* is going to begin, the elders intervene and urge the acceptance of a *fine*. At first, it would seem, the acquiescence of the injured party is voluntary. Until quite late in history, the ultimate right to battle cannot be denied. But every effort is made by the elders to induce the parties to "swear the peace." In the world-wide habit of *shaking hands*, we probably have a dim survival of a practice insisted upon by the early peace-makers, as a guarantee that the parties would not use weapons against one another, at least till all other remedies had been tried. For if the hand is clasped in another's, it can hardly strike a blow.

No general rules of Tribal Law.—It is obvious from what has been said that, while we may describe the general character of Tribal Law, no enumeration of its rules can be made. Each tribe has its own Law, binding only upon members of its own tribe. General principles will, no doubt, be found running through it all; inheritance in the male line, prohibition of marriage outside the tribe (or inside, as the case may be), relationship of classes, rights in pasture land, and so on. But in details these will differ from tribe to tribe, and even in branches of the same tribe. The investigations of the British Settlement Officers show, for example, that there are at least several hundred different systems in force in the British Panjab alone, though the population of that country is a little less than the population of England. Long before there is a Law of the Land, there is a Law of the Tribe; and by his own Law alone will a tribesman consent to rule his actions.

CHAPTER VI

Agriculture and the Clan

Origin of agriculture.—As in the case of the taming of wild animals, so in the case of tilling the ground, we are left in the dark as to the benefactor who first made the priceless discovery. Such scanty legends as exist on the subject are evidently the work of later times, or refer to an *importation* rather than to a *discovery* of the secret.

But, if we have no evidence on the subject, it is one on which we may fairly indulge in scientific speculation. Although the Australian aboriginals know nothing of agriculture, they gather the seeds of a wild plant known as *nardoo*, and, after bruising them in a rude mortar, make them into cakes. Let us suppose, in some country endowed with greater natural wealth than central Australia, that a pack of savages, having gathered a greater store of wild seeds than it could possibly consume, buried the surplus in some earth-heap or mound, and left it in the summer camp till the return of spring. Suppose an unusually wet winter, or an exceptionally early spring. Returning to its summer quarters, the pack might well discover that the stored-up grains had sprouted and assumed something like the shape in which they had known the ears when they had gathered them in the forest the previous autumn. Such an object-lesson would hardly be lost, even on the savage mind. The same thing might well happen to the wild yams or other edible roots which are some of the earliest food of man.

Character of agriculture.—Whenever the savage

had begun to act upon the idea this suggested, agriculture, in its most primitive form, would have come into existence. The rest was only a question of time. And it is quite possible that agriculture, in a very imperfect form, was practiced as early as pastoral pursuits, at least in the majority of cases. But it is not difficult to see why agriculture takes rank as a development of human industry distinctly later than the tending of cattle and sheep. It is very much more *laborious;* and man, especially primitive man, has no love of work for its own sake. Compared with the hard toil of the husbandman, the life of the shepherd is easy and enjoyable. The capture and breaking-in of wild animals is, to the savage nature, a fascinating task; the one gratifies his love of excitement, the other amuses his hours of idleness. Even the driving abroad of flocks and herds to daily pasture is no exacting task. The milking, the dressing of skins, and the spinning and weaving of the pastoralist's life are chiefly done by the women and children. But the primitive curse is upon the tiller of the soil: "in the sweat of thy face shalt thou eat bread."

Reasons for its adoption. — Agriculture, therefore, remains for ages, even after its rudiments are known, a mere supplementary pursuit, practiced for the purpose of providing a few luxuries, rather than the substantial occupation of Man. It is not adopted on a large scale till the increase of population (always the result of a step forward in civilization) begins to press upon the means of subsistence. One of the most striking facts about agriculture is that, though its service is hard, its produce is infinitely greater than that of pasturage. A learned German writer, Dr. August Meitzen, who has devoted his life to the study of questions connected with land settlement, calculates that an area which, used as a cattle-run, will maintain one hundred people, will, if brought under the plough, feed three or four times that number, and leave a substantial margin over. Probably the practice of agriculture, on a large scale, began in the Delta

of the Nile and the Mesopotamian countries, where the barren desert afforded little pasturage for cattle, but the rich alluvial valleys of the great rivers rendered agriculture easy and profitable. From thence it spread through Asia Minor, northwards and westwards, till it became known throughout Europe, and was gradually adopted as the needs of the population demanded it. When Cæsar says of the Germans that they do not "study" agriculture,* he probably does not mean that they had never heard of it, but that they found it easier to satisfy themselves with milk, cheese and flesh, the produce of pastoral pursuits. There is a very interesting passage in the "Book of the Abbey of Clonmacnoise," which tells of Ireland that "there was not ditch nor fence nor stone wall round land till came the period of the sons of Aed Slane (seventh century A. D.), but smooth fields. *Because of the abundance of the households in their period, therefore it is that they introduced boundaries in Ireland.*" Some writers (e. g., Mr. Seebohm) take this passage to refer to the breaking-up of open arable fields into small enclosed holdings. But there seems little doubt that what the chronicler is really referring to is the general adoption of agriculture in the place of pasturage, *because of the abundance of the households.* There is, in fact, plenty of evidence to prove that Ireland was once a purely pastoral country.

Early methods of agriculture. — But we must not suppose that the adoption of agriculture meant the adoption, all at once, of farming *as we understand it.* Perhaps it will be interesting to give a hasty sketch of the different stages through which the cultivation of the ground has passed. Afterwards we may pass to the still more important subject of the results of the adoption of agriculture.

1. **Forest clearings.** — The beginnings of *agriculture* nearly always involved clearing the ground, for the simple reason that the most fertile land is sure to be covered with

*"Agriculturæ non student." (De Bello Gallico, vi. 21.)

the rank growth of ages. Doubtless, much land had already been cleared for pasture; but people are unwilling to sacrifice this for the apparently uncertain prospects of harvest. Sometimes the forest is cleared by burning, the ashes being used as a sort of primitive manure, and the seed being simply thrown in and left to come up with the forest weeds. In other places, the axe is used, and the ground, when cleared, broken up with the mattock, or primitive hoe, which seems to have been an early modification of the savage's digging-stick.

Extensive cultivation.—The ground thus cleared is cropped year after year, until one of the fundamental laws of nature begins to assert itself; viz., that a repetition of the *same crop* on the *same land* tends to produce barrenness. The returns are less and less each year, till the ground is abandoned in despair (probably being deemed accursed), and a new patch is taken into cultivation. This agriculture is technically called *extensive*, and is, of course, very extravagant, both in labour and land.

2. **Field-grass system.**—Although the clearings are thus abandoned for purposes of sowing, they act as a sort of rough pasture, or *fallow*, for the cattle of the community, who pick up a scanty subsistence from the shoots and weeds remaining after the reaping of the last crop. In tropical countries, such as India, and even in subtropical lands, such as the fertile districts of southern Australia, abandoned patches speedily become again converted into "jungle" or "bush," and explorers of later generations are startled to find, in the depths of the forest, traces which point indisputably to the existence of former cultivation.*

Alternations of crop and fallow.—But, in temperate zones, the land is not covered again with trees, and, after the newly-reclaimed patches have been themselves exhausted, the tribesmen return to their old patches and

* No doubt this fact accounts for a good many of the so-called "discoveries of pre-historic races."

plough these again, to save themselves the trouble of further clearing. Then is discovered another great secret of Nature; viz., that, though successive crops of the same kind will exhaust a piece of land, yet, *if that same piece is left to lie fallow for a time, it will recover its fertility.* This discovery leads directly to—

3. **The two-field system,** in which the community keeps two distinct patches of land at work, sowing one in each alternate year, and leaving the other to lie fallow. This system of agriculture is widely prevalent in backward countries at the present day.

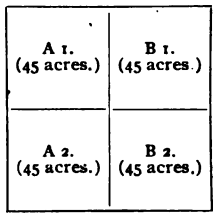
4. **The three-field system.**—This, which is really an improved variety of the last system, is due to the still further discovery that, although a continuation of the *same* crop on the same piece of land exhausts it very quickly, an *alternation of crops* will not exhaust it so quickly. The plan is, therefore, to have *three fields* and *two different crops* going on at once, *the third field lying fallow once in every three years, instead of once in every two.* Thus, in a *course* of three years—

1st year—Field	A = oats	B = beans	C = fallow
2nd " — "	B = oats	C = beans	A = fallow
3rd " — "	C = oats	A = beans	B = fallow

and so on for each triennial period.

Question between the two-field and the three-field system.—The advantages of this plan, in the increased variety of crops, was early perceived; but, for a long time, people preferred to work it with the two-field system, by dividing the ploughed field each year into two parts. In fact, they were afraid that the other system would require too much ploughing. During the later Middle Ages this was a "burning question" in western Europe. But the three-field people won the day, as they were bound to do; and their argument is so triumphant and so neat that it is worth while to set it out. We take first an imaginary area of 180 acres, divided into two fields, one of which lies fallo

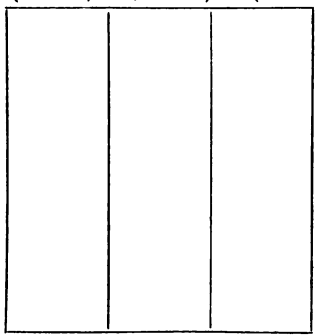
every year, while the other is partly under oats and partly under beans or peas. Thus—



Now take an imaginary *course* during any one year.

September. Plough A 1, and sow oats = 45 acres
March. Plough A 2, and sow beans..... = 45 acres
June. Plough B (whole) *twice** and leave fallow..... = 180 acres
Total ploughing 270 acres

Now take the same area divided into *three fields.*



Again a year's ploughing:

September. Plough A and sow oats..... = 60 acres
March. Plough B and sow beans..... = 60 acres
June. Plough C *twice*, and leave fallow .. = 120 acres
Total..... 240 acres

*This is necessary after the crop, to get rid of stubble.

i. e., actually 30 acres *less* of ploughing. But that is not all. For, if we look back we see that, if we have worked our lands on the two-field system, we have only harvested the crops of 90 acres; but, if we have used the three-field system, we have taken the produce of 120 acres. Thus, the three-field system beats the two-field, hands down; and it is not surprising to find that, in medieval Europe, it became the rule in the most progressive countries, and developed a regular set of names. Thus, in England, the autumn-sowing was called the *tilth grain*, the spring sowing the *etch grain*, and the idle field the *fallow;* and there are corresponding terms in many other countries.

5. **Convertible husbandry.**—The three-field system reigned supreme in western Europe, until, at a comparatively recent date, it was abandoned in favour of a still more economical plan, by which fallows are practically abolished, and, by a great increase in the number and variety of crops, and the use of artificial manures, the land is never (in good hands) allowed to get exhausted. This change, which came about in England in the eighteenth century, and which was greatly due to special circumstances, such as the Dutch connection and war prices, is, however, closely connected with an important change, not merely in the methods, but in the *organization* of agriculture, that is to say, in the *institutions* by means of which agriculture is worked.* To this we must now turn our attention.

Organization of agriculture.—At the end of the Middle Ages (as we call them), that is to say, when the revival of learning in Europe and the Reformation began to break up the old order of things, the typical agricultural unit, not only throughout Europe, but among the vast populations of India, Egypt and Persia, was the *village* or township. At first sight, a village appears to be merely a collec-

*All these five stages of agricultural method may be observed at work in Sweden at the present day.

tion of farmers and labourers, cultivating pieces of land which happen to be near together. And such, in fact, the modern village of western Europe generally is. The inhabitants are, in fact, merely *neighbours*, nothing more. But the medieval village was a great deal more; and the difference is usually expressed by describing it as a *village community*. There has been a good deal of nonsense talked about the *village community*, as if it necessarily meant a *socialistic group* of people, who do their work and hold the proceeds *in common*. Such an assertion cannot possibly be made of historical times. Whatever may be our view of the *origin* of the medieval village, it is quite clear that, in historical times, we have practically no *evidence* of an agricultural group (larger than a single household) cultivating its field in common and dividing the proceeds. So far as our evidence goes, each farmer has his own land, and reaps and stores his own harvest. Nevertheless, there is a real meaning in the phrase *village community*, and we shall best bring out that meaning by enumerating half a dozen points in which the average village of the sixteenth century differed from the average English (or French or German) village of the nineteenth century.

1. **Open fields.** — In the first place, we notice a purely physical difference. *There were practically no hedges in the medieval village.* The arable land of the village lay in great *open fields*, many hundreds of acres in extent, separated from one another and from the *meadow* and *waste* only by *balks*, or banks of unploughed turf, on which grew trees here and there. The beautiful hedges of the modern English countryside are the result of the great *enclosure movement*, of which we shall have to speak later on. This difference, of course, need not have been connected with a difference in the methods of agriculture. As a matter of fact it was so connected.

2. **Equality of holdings.** — In a modern village, the farms will be of all sorts of sizes, determined by the circum-

stances of the case. But if we examine the *terrier*, or ground-plan, of a medieval village, in which the lands worked by each farmer are distinguished, we shall notice a curious thing. We shall see that there is a *tendency* towards equality of holdings. There will be a great many farmers with *about* thirty acres of plough-land each. There will probably also be one or two much larger holdings, e. g., 120 acres, also more or less equal among themselves, and, what is still more curious, bearing a fixed proportion to the smaller holdings, usually of four to one. There will also be a number of people, obviously in an inferior position, holding little plots or patches cleared from the waste. Finally, there will probably be a great man, who has a big house and park (or enclosure), as well as a great deal of land in the *open fields*.

3. **Forced labour.**— Corresponding with this strongly marked division of classes, there will be found, if the affairs of the medieval village be further investigated, a curious system, by which the two poorer classes in the village render labour services to the richer, not, as agricultural labourers do now, for *wages*, but as part of the terms on which they hold their land. The poorer class, or cottagers, will, practically, be working almost entirely for the *lord*, as he would be called in Europe, for the *agha* in Persia, for the *zamindar* in India, possibly also for the few rich farmers, if such existed. But the ordinary small farmer, the *yardling*, as the English called him, will also have to work for the lord, though probably only a comparatively small part of his time. Indeed, in many cases, he will probably have *compounded* for his labour dues by payment of a fixed *money rent*, and so will be what we should call an ordinary *tenant farmer*. Nevertheless he will clearly at one time have been a *serf;* i. e., a man who has to work for another, whether he likes it or not.

4. **Intermixed plots.**—Now-a-days, the land of each farmer in a village lies in a more or less compact mass. The

farmer would consider it a great hardship and waste of time if it did not. But the farmer in a medieval village not only had his holding divided amongst the two (or three) great fields into which the arable land of the village was marked off (for cultivation according to the rotation of crops previously described), but, even in each of these three fields, his holding was not *compact*, it was split up into a large number of small strips (usually about half an acre each) *scattered* all over the field. Besides his 30 acres or so of arable, he would also have the right to turn so many cattle and sheep into the *meadow* of the village, except at the time of hay growth, when the meadow would be temporarily enclosed with hurdles, and then he would get the hay of a small plot. Finally, he would have the right to turn so many inferior beasts — donkeys, geese, swine — on to the *waste*, or uncultivated land of the village, and also to cut turf and wood therefrom for fuel and repairs. Thus we see that his holding, which always included a house in the village, was a complete outfit, so far as land was concerned.

Closely connected with the "intermixed" character of the farms was the practice of *shifting*, or redistributing, the plots held by a farmer at stated intervals. This practice had ceased in the more progressive parts of Europe long before the end of the Middle Ages; but in Sweden and Denmark there were clear traces of its existence; in India, under the name of *vesh*, it was well known, and in Persia, even at the present day, it frequently takes place under the management of the headman of the village.

5. **Customary management.** — This feature which, perhaps, distinguishes the medieval village more clearly than any other from the modern village, was a necessary result of the system of intermixed holdings. All the work of the village was settled by a rigid system of rules, handed down from remote ages, which prescribed exactly when and how each operation should be begun, done, and ended. Now-a-days each farmer manages his lands as he thinks

best, subject to the terms of his agreement with his landlord. If farmer Jones thinks it wise to cut his hay on Monday, he is not obliged to wait for farmer Smith, who thinks that Thursday will be better. Each farmer cuts his hay when he thinks best. But this sort of independence would have been impossible when the lands of all the different farmers were mixed up together. The village was fixed in the grip of custom, and one of the chief reasons why agriculture was for so many centuries unprogressive, was just because the enterprising farmer could not act without convincing the *whole* of his fellow-villagers.

6. **Officials.**— Now-a-days the ordinary village perhaps has its policeman, and maybe its *maire* or chairman of parish council; but the policeman is probably appointed and paid by a distant authority, and the *maire* or chairman has very little real power. In the Middle Ages, each village had an elaborate staff of officials, whose duty it was to work for the whole village. First, there was the *headman* or *reeve*, chosen from or, it may even be, by the villagers, who represented the villagers as a whole, was responsible to the lord for their labour dues, enforced the customs, and was the mouthpiece of the village in its dealings with the outside world. The position, though it doubtless carried (as it still does in India and Persia) certain privileges, was not without its drawbacks; and there are some traces of a rule that its acceptance was compulsory. Then, too, there was a *constable* or *beadle*, whose duty it was to carry messages round the village, to summon the villagers to meet under the sacred tree, and generally to enforce the orders of the reeve and *moot*, or meeting of the villagers. Then there was the *pound-keeper*, who seized straying beasts and kept them in custody till their owners made fine to the village chest; the *parker*, or common-keeper, whose duty it was to tend the cattle and sheep in the meadow, and to see that no one put in more than his proper share or *stint;* the *swine-herd*, who led the swine of the village daily to the wood to grub for acorns;

the *goose-herd*, and so on. In many villages, all over the world, it was the duty of the village to provide *watchmen*, at least during certain times of the year, to guard the flocks at night. We find our English Edward I., in his great Statute of Winchester, insisting that the custom should be kept up; and the "Watch" were a standing joke in Shakespeare's time. In India and other Oriental countries, even at the present day, the village carpenter, potter, blacksmith, cobbler, etc., are real *officials*, provided for, like the other officials, by an allowance of land, which is plowed and sown for them by the farmers, while they, in return, must give their labour to any villager who may require it. Doubtless it was so at one time in Europe.

Origin of the village.—This description will have been sufficient to show that the medieval village, though not that socialistic community which platform orators have delighted to describe it, was a very highly organized and closely compacted body, something utterly different from the mere groups of independent farmers in modern Europe, usually held together, if at all, only by the fact that they are tenants of the same landlord.

Two views.—Now, concerning the origin of this *village community*, a conflict fierce, and, it is to be feared, somewhat acrimonious, has raged. For, whilst we have had great controversialists, such as Mr. Seebohm, Professor Vinogradoff, Professor Maitland (who can hardly be called a controversialist at all), and M. Fustel de Coulanges, who have all combined great learning with perfect courtesy, we have also, unhappily, had inferior controversy from apologists of particular theories, who have not always observed the courtesies of scholarship. Briefly speaking, and putting aside minor details, the rival views are (1) that the typical village was originally a band of *kinsmen* working for themselves; (2) that it was originally a group of *serfs* (or *slaves*) working for a master. Mr. Seebohm and M. Fustel de Coulanges take the latter view; Professor Vinogradoff and (with reserva-

tions) Professor Maitland take the former. It is so extremely unlikely that the views of any of these eminent and learned men are totally baseless, that is a pleasing task to the author to suggest a solution of the difficulty which shall combine the views of both sides.

Glancing back for a moment at our account of *Tribal Organization*, we shall remember, in the first place, that, though what may be called the average tribesmen were free-born kinsmen of each other, there was also attached to each tribe a body of *strangers*, in a more or less inferior and servile position. Furthermore, we shall remember that, among the Irish and kindred races, the rich tribesman frequently loaned out part of his cattle to poorer freemen, in return for an annual payment or *rent*, and certain *feastings* or entertainments. Finally, we shall remember that each tribe had its *chief* or head, who was endowed with special privileges, and who received various gifts and offerings from the tribesmen. Here at once we have a division of patriarchal society into ranks, which correspond in a most curious way with the divisions in an ordinary village community, as described in this chapter. The tribal *chief* corresponds with the village *lord* or *agha*, the rich tribesmen with the holders of large farms, the poor tribesmen with the *yardlings*, or thirty-acre men, the "strangers" with the cottagers or serfs of the village.

Similarity between tribal and village organization.—But, after all, such a coincidence may be merely casual. We have no right to say that it proves the connection between the tribe and the village. As a matter of fact, there are substantial differences to be accounted for; and it is by the neglect to explain such differences that historians claiming to be scientific incur ridicule. For example, in the tribe, the poor *Ceile*, or holders of stock, pay their rents, not to the chief, but to their individual cattle-owners, while, in the village, the labour services of the *yardlings* are rendered almost wholly to the lord. As a matter of fact, there is an

important transition step between the *tribe* and the *village*, namely, the *clan;* and it is for evidence of the nature and origin of this body that we must look.

The Flaith.—Fortunately, it is not very hard to find. If we look once more at our "Ancient Laws of Ireland," we shall find an important person known as the *Flaith*, who is permanently connected with a definite territory upon which are settled—

(*a*) His *Ciniud*, or agnatic kinsmen, grouped together in an apparently artificial way, known as *Finé;*

(*b*) His *Ceile*, or, as we should call them, *tenants*, who, though tribesmen, have accepted stock from him in manner before described;

(*c*) His *Fuidhir*, or *strangers*, who, apparently, have become his peculiar charge, either by some kind of distribution within the tribe, or by voluntary arrangement.

Apparently, in order to attain this position of *Flaith*, or *landlord*, the ordinary *Boaire*, or rich cattle-owner, must have held his position for three generations. The third in descent from the *Boaire*, if he is still rich and has maintained his position on the same land, becomes a *Flaith*. But how did he come to be settled permanently on this land?

No subdivisions of land in the pastoral period.—It is fairly clear that, during the purely pastoral epoch, there were no permanent divisions of the land within the tribe. Each man's share of the tribal land was reckoned, not in acres or other land measurement, but in *cattle and sheep*. It was, obviously, much easier to reckon this way than to go to the trouble of measuring out the land and allotting a portion to each man. The cattle wandered about, according to the season of the year, followed by the tribesmen with their tents and scanty goods; and it is probable that this is all that a good deal of the so-called *nomadism* amounted to. But now we have to suppose the practice of agriculture slowly

adopted, "because of the abundance of the households." Gradually this wandering existence became more and more impossible. Granted that, at first, the cultivators of the soil cleared and broke up any part of the forest land not actually occupied by their fellow-tribesmen, sooner or later the improvements in agriculture described at the beginning of this chapter rendered people unwilling to abandon their land. But who were the earliest cultivators of the soil? Obviously, the strangers attached to the tribe, upon whom the rough work of the community fell, and who would be the first to suffer from scarcity of food. Gradually the tribal territory thus got broken up among the rich tribesmen, each with his *Ceile* or dependents and his *Fuidhir* or strangers; and, after three generations of holding, he could not be dispossessed. This view is strikingly suggested for Ireland by the famous poem of Finntann on the battle of Magh Lena. He tells us that of old Ireland was divided into one hundred and eighty-four *Tricha Ceds*, i. e., tribal territories, that each of them was subdivided into thirty *Ballys*, or clan lands, each maintaining three hundred cattle, *and having twelve seisrighs, or ploughlands*, each of one hundred and twenty acres. We are not bound to suppose that the poet was entirely accurate in his figures; but he was not likely to have made a glaring misstatement of obvious facts. We may accept his general description as true, the more so as it is substantially supported by the evidence of the Welsh Laws.

The Welsh evidence.—For, in the Welsh Laws, we have not only the *kin*, or *tribe*, settled in its *cantred*, but we have a subdivision known as the *gwely*, under a *breyr*, or *uchelwr*, who is a sort of minor patriarch, at the head of a living family of three generations. The term *gwely*, which literally means a bed or couch, is strongly suggestive of family ties; and, as a matter of fact, we have in the Welsh Laws a very interesting description of the ancient Welsh patriarchal house, which seems to have been much of the

same type as the ordinary Gothic church. Behind the pillars (*gavels*) which supported the roof and formed the nave, were what we should call, in modern architecture, the "transepts," but which the Laws call the *gwelys*, or couches; and the *Tir Gwelyawg*, or ancestral land, is, like the Irish *Orba*, the land of a family which has remained in possession of the same district for three generations, and has tenants and serfs under it. In the Welsh evidence, too, it is also worth noting that, primarily, the agriculture is supposed to be done by the *Alltuds*, or strangers; the free tribesmen occupying themselves principally with cattle-rearing.

The Scottish evidence.—Lastly, in the Scottish evidence, especially that part of it which relates to the Highlands, we find the *clan*, or section of the tribe, permanently settled as a land-occupying unit engaged in agriculture. Thus, even after the feudalizing process, which began in the fourteenth century, had made some little way, the *davoch* is found to consist normally of four parts; viz., the *thaneston*, or lord's demesne, the *tenandries*, or holdings of the superior class, significantly known as "kindly tenants," usually on very profitable terms, the *steelbow lands*, occupied (usually in holdings of two oxgangs, or a *husbandland* of about twenty six acres), by small farmers who receive their stock from the *thane*, or lord, and the *servile lands*, occupied in small patches by cottagers who spend most of their time in working on the lord's demesne. This looks extremely like the *Orba* of the Irish Laws, and the *Tir Gwelyawg* of Wales.

Kinship in the village.—Thus, we have seen, if our account be correct, that those writers who contend for the origin of the village in a group of *kinsmen*, have a good deal of truth on their side. And their contention is indirectly supported by many significant, if indirect, survivals. One of these is the widespread practice of *fosterage* in early agricultural society, i. e , the practice of the rearing members

of the community putting out their children to be brought up by the poorer. As is well known, *fosterage* ties were looked upon in early times as almost equivalent to *kinship*; and it would seem that by this practice the community wished at least to *pretend* that all its members were of kin. Then, too, there is the equally widespread practice of the "maiden fee" (*Merchet*, as the Saxons called it; *Amobyr*, as it was known to the Welsh). This consisted of a payment made to the chief or lord on marriage of a villager's daughter, and represents, no doubt, the ancient "bride-price" received by the wife's kindred. Finally, expressions such as the "brotherhood," to signify the village in certain parts of India, and the known unwillingness in primitive countries at the present day to permit a stranger to acquire lands in a village, all point to the same conclusion.

Lordship in the village.—On the other hand, the writers who assert the origin of the village to be in *lordship* rather than in *kinship* have much on their side. To say nothing of the important part which, as we have seen, was played by the subject stranger in the clan, we must not forget that, wherever we find primitive agricultural society, we always find something in the nature of *dues* or *rents* paid by the farmer. Even if we put aside such obviously later introductions as the *Danegelt* in England, and the *Khiraj* of the Mahommedan conquests, about which we must speak at a later stage, we have still the *food-rents* and *feastings* (see p. 34) due from the receiver of stock to his lord, and from the latter to his chief; while from all lands something in the nature of tribute is paid to the tribal chief. The latter also, as well as the heads of clans, has his special allotment of land for his support, and this he frequently loans out to people who pay him part of the produce in return, just as, in the earlier pastoral days, the rich cattle-owner took food-rents and feastings from his *Ceile*, or receivers of stock. Once more, there can be little doubt that, whilst land was still plentiful, any enterprising clansman

might colonize the *waste* lands of the clan, and found a new village with a band of followers whom he collected round him; and in such a case he would, doubtless, become the lord of the new village.

The fact is, that in *kinship* and *lordship* we have two very early and very powerful principles of association. The former appeals more to sentiment, and tends to produce *harmony;* the latter is founded upon respect for superior strength and masterful qualities, and tends to produce *obedience.* Both harmony and obedience are essential to the successful ordering of a social unit, such as the agricultural village.

CHAPTER VII

Industry and the Gild

Metal-working.—By a somewhat unfair use of the term, the word "industry" is usually applied only to pursuits other than hunting, cattle-tending and agriculture. In a sense, therefore, there is "industry" even in the savage epoch, when the women of the pack skin and dress the captured animals in the cave or bark hut; still more so in the pastoral epoch, when the wife and the daughters of the shepherd weave the wool of the flocks into garments, and make the milk of the herds into butter and cheese. But the great spur to industry comes with the development of agriculture, when there is a demand for ploughshares, reaping hooks, spades, mattocks and hoes; and this is itself connected with one of the most important subjects in the history of civilization: *the art of working in metals.* The primitive implements of husbandry are, no doubt, made of wood and stone; but no great progress in agriculture can be made until metal tools are employed.

Use of iron.—Now it is tolerably clear that even pastoral races have some knowledge of working in metals. The brazen helmets and corselets of the Homeric heroes, their swords and spears, the uncoined money (reckoned by weight) of the Jewish patriarchs, the gold and silver ornaments of the African tribes, and the numerous bronze relics of great antiquity constantly dug up, all point to the fact that the art of working in metals is very ancient. But it is to be noticed that all these are *soft* metals, which can be

worked with the stone hammer, and *beaten out*, whilst cold, into the required shape. The real revolution comes when men learn to work in *iron*, which can only be molded by being *smelted in the fire*, but which, when so worked, is infinitely harder than the older metals, and can produce results which they could never have produced.

There is a good deal of ground for conjecturing that this important art of smelting metals did not originate in Europe, but was imported from the East, possibly from Egypt, where iron was worked in very early times. A brilliant German writer, who has endeavoured to draw a picture of primitive Aryan society from the evidence of *language*, has pointed out that there is no general or widely-spread word for "iron" among the Aryan-speaking races. And from this fact he draws the conclusion that the knowledge of iron was *acquired* by the European nations after their migration into western Europe. Be this as it may, it is quite certain that the European races have long ago surpassed all the rest of the world in the art of *working in iron*.

The smith.—It is evident, then, that industry (in the modern sense of the term) begins with the important craft of the *smith*, from which, indeed, almost all other crafts may be said to have sprung. The smith it was who forged and mended the ploughshares and reaping-hooks of the village, and, still more important, its swords and spears. He it was who, as later improvements came, made the iron nails which took the place of the old bone and wooden skewers, and the metal knives which superseded the old stone axes and sharp flints, who substituted the iron hammer for the rude lump of quartz with a shaft stuck through it. If any one with the necessary knowledge and patience would write a history of the craft of the *smith*, tracing its development in all ages and in all countries, he would do yeoman service to the cause of social history. What little is known is very significent. For example, it seems toler-

ably clear that for many ages in Europe the craft was in the hands of travelling stranglers, perhaps the ancestors of our modern *gypsies*, who jealously guarded their valuable secrets and made no end of mystery of their calling. The many legends which have grown up round the calling of the *smith* (of which the Wayland Smith episode in Scott's *Kenilworth* is a skilful adaptation) are fertile matter for a thorough investigation. The *gypsy* idea is, of course, quite in accordance with the suggestion, that the art of smelting iron was brought into Europe by strangers.

Specialization of industry.—But, as might have been expected, the Indo-European peoples, with that capacity for *adaptation* which has been one of the great secrets of their brilliant success in the world, ultimately acquired the art; and the numerous families of the *Smith* name (*Schmidt* in German, *Favre* in French, etc.) testify to the popularity of the pursuit. Some other crafts branched off from it; e. g., the *carpenter*, who worked in wood with the smith's nails, hammer, and chisel; the *cobbler*, who borrowed his needle and his knife; the *tailor*, who adopted his shears and his needle; the *loriner* (or leather worker), the *turner*, the *wheelwright*, the *cooper*, and so on. Even the older crafts felt the tendency towards *specialization*, and, instead of each family doing its own weaving, thatching, baking and brewing, we get these crafts undertaken by special bodies, the *weavers*, *tilers*, *bakers* and *brewers*.*

Commerce.—But, in remembering the *makers* or *producers*, we must not forget another equally important class of industrial workers; viz., the *merchants* or *exchangers*. Indeed, there is some reason to believe that *exchange* precedes *production* in the order of ideas. The Australian savages do not *make* anything worth speaking of, but they *exchange* certain of their natural advantages for others

*It is an interesting fact that, in England at least, the earliest professional brewers (or should we say brewerresses?) were women.

which they need. Thus, a pack which hunts a country abounding in a peculiar green stone, greatly valued for the purpose of stone axes, will send some of its young men with lumps of the precious articles, to exchange against the feathers of certain birds collected by another tribe, which are greatly valued for decorative purposes. These primitive merchants observe certain formalities in their approach to the stranger camp; and are, by immemorial custom, entitled to be treated as *guests*, not as *enemies*. The custom of making presents on approaching an African chief as a stranger is said to be a survival of this ancient practice; for, it is to be noted, the chief always observes the etiquette of offering return gifts. At any rate, we get here the earliest appearances of the *law of the market*, which is again a notable factor in the history of civilization.

Barter and sale.—Trade is, of course, for long ages conducted in its primitive form by means of *barter*, i. e., the exchange of one article against another. The disadvantages of such a form are obvious. One tribe or clan may have plenty of ostrich feathers, for example, to dispose of, but may not require the only articles which another has to offer. It is clear that no business can be done between them. Inside a community the matter could be adjusted by a sort of debtor and creditor account; but between stranger, possibly rival communities, such a course would not be possible. Occasionally some *token*, such as the African cowry shell, is adopted as a *standard of value*, in which payments can be made. But the objection to this course is that these articles are not really in themselves *valuable*, and may, therefore, involve the community which takes them in a loss. A great advance is made when some article of universal demand, such as the *ox*, is adopted as a standard of value. We then get the difference between *barter* and *sale*. The community which requires the ostrich feathers, but which has no article specially required by the other community to dispose of, pays so many *oxen* in

exchange for the feathers. The oxen are thus the *price*, which, as economists tells us, is *value expressed in terms of money*. A curious testimony to the truth of this account is found in the fact that, when oxen are superseded as money by the *precious metals*, which, as being more portable and less easily subject to depreciation, are really more suitable, the earliest coins are often found to be stamped with an *ox's head*. But we must not suppose that *coined money* at once takes the place of oxen. There is an intermediate stage of *uncoined money*, which passes by *weight*. Abundant evidence of this fact survives; but we need not look farther than our own word *pound*, which may mean either a *weight* or a *coin of a particular value*.

Organization of industry.—Having now seen something of the way in which *industry*, in its two branches of *production* and *exchange*, arose, we turn, in dealing with agriculture, to examine how industry was *organized*, i. e., what *institutions* were developed to work it.

Village craftsmen.—There can be little doubt that, at first, there was an attempt to fit industry into the village system. Although the *smith*, as a stranger, would not readily be absorbed in a group of kinsmen, although, as a matter of fact, we generally find the smithy at a little distance from the village, yet the "village blacksmith" became, and, indeed, still is, a recognized village institution. So also with the other early crafts. The carpenter, cobbler and tailor, the weaver, tiler and baker, are in Oriental countries at the present day, and formerly in European countries were, integral parts of the village system. As for the primitive merchant, we find him in the humble guise of the *pedlar*, or *huckster*, going about with his pack from village to village, and so being, if not a villager, at least a connecting link between villages.

The market.—But, as industry became more and more *specialized*, as new crafts developed out of the old, it gradually became clear that more rapid progress was made

and better work done if the workers in a particular craft collected together in a *centre*, perhaps specially suited for the particular industry; and thus we get the beginning of that tendency for industry to gravitate towards *towns*, which is so marked a feature of modern industrial life. It may be that the gradual collection of craftsmen formed the *town*, or it may be that the existence of a fortified town attracted the craftsmen. That is a much-disputed question. But it is tolerably certain that one of the earliest *institutions* in connection with towns was the *market*, and that the existence of the market was closely connected with the development of *industry*. The neighboring villages would not want to come to market for agricultural produce; but they would want to come for the produce of what is specially known as "industry."

Now, the very essence of the market is that it is *neutral ground*, on which the members of different communities can meet without trespassing on one another's territories. As its name implies, it was frequently on the *march* or *boundary* of two or more districts. And, whether it was so or not in any particular instance, it was essential that it should be a place of *peace*. The existence of the *market cross* in later days shows that the Church took the market under her special protection. And, also later, kings and emperors made a special point of protecting the peace of their markets. How the peace was guarded in the ancient days before Church and State, it is difficult to say. In savage times the essential point is that seller and buyer shall never actually come into contact. The seller brings his article near the strange camp, lays it down on the ground in full view, and *retires*. The intending purchaser comes out, inspects the article, places beside it what he is willing to give in exchange, and also *retires*. The seller once more comes up, inspects the proffered exchange, and, if satisfied, takes it away, leaving his own article to be fetched by the purchaser. If he is dissatisfied with the offer, he takes his own article away.

Needless to observe, savage barter is a trifle tedious; but time is of no value to savages, who, indeed, do not understand what it means. In patriarchal times, the "gods of the market place" probably are supposed, in some mysterious way, to guard the peace of the market. At any rate, the *bazaar*, which is the Oriental market, is a typical feature of town life in patriarchal countries at the present day.

The gild.—But it is totally contrary to the ideas of primitive man to live *as an individual*, isolated and unprotected, in a large society. We have seen that pastoral pursuits developed the *tribe*, with its strong *blood bond*, its mutual protection of its members by the *blood feud* and its *ancestor worship*. We have seen, too, that agriculture led to the existence of the *clan*, with its strongly organized *family system*, its elaborate arrangements of *land occupation*, and its reciprocal duties of *protection* and *service* between chief and followers. Just in the same way, the appearance of industrial pursuits produced the *gild*. The craftsman, finding himself in a strange place, cut off from his own kindred, formed with his fellows an association resembling as closely as possible the association of kindred which he had left behind him. Perhaps at first it was merely a *peace-association*, a *frith-gild*, as the Saxons called it; then it took on a religious character, doubtless in imitation of the old *ancestor worship* of the clan. The medieval gild always had its patron saint; and, if its members did not really believe themselves to be descended from their patron saint, they often spoke as if they did. Finally, the *gild* became more industrial in character; busying itself more and more with such matters as the regulation of work and prices, the inspection of workshops, the fixing of measures and qualities, the exclusion of strangers, and so on. But the more we study the *gild*, the more we see its likeness to the old *clan*. Like the clan, it was strongly hereditary. The best title to admission to the full privileges of a gild was the fact that the applicant's father was, or had been, a member. Failing

birth, *apprenticeship* was the only alternative. But apprenticeship is very like *adoption*. In the days of gilds, the apprentice lived in his master's house, fed at his master's table, shared in his worship, was clothed and taught by him, just like a son. Just as the member of a clan took the name of the founder, and put before it or after it some sound which indicated "son of," so the member of the gild called himself by the name of his craft. While the clansman called himself "*Mac*Dougall," or "Bill*ing*," or *ap* Tudor," or "*Ben*hadad," the craftsman called himself "Smith," "Turner," "Carpenter," and so on. In fact, it is said by some competent observers that the Indian *caste system* is merely an elaboration of hereditary craft-gilds. Moreover, the gild in later days provided schools and orphanages for the children of its members, attended their funerals, provided masses for their souls, spoke of its members as "brethren," had an "elder man" (*Ealdorman*) for chief, settled disputes amongst its members, and forbade its members to compete with one another, just as a well-conducted association of kinsmen would do. Finally, on its strongly developed *social side*, in its frequent drinkings, feastings and merrymakings, the medieval gild strongly resembled a great family group.

Thus we have seen that patriarchal society had succeeded, more or less completely, in making provision in its own way for the needs of advancing civilization. As each new development of human ingenuity brought a new occupation to light, patriarchal society was equal to the task of organizing itself to receive and carry it on. Obviously, patriarchal society rested on principles which are; or were, very deep in human nature, very capable of making themselves felt under all sorts of circumstances. Once more, as we are leaving the subject, it will be well to summarize briefly the distinctive features in which patriarchal society differed from modern or *political* society, the consideration of which lies

immediately before us. We cannot too clearly realize the contrast; the more clearly we realize it the more shall we really understand modern conditions.

1. **Personal basis.**—Now-a-days we regard *territory* or *locality* as the great basis of society. But, as we have seen, despite the fact that *nomadism* or wandering life practically ceased with the adoption of agriculture, patriarchal society always considered itself as a body constituted by *race*, not by *territory*. Even the *gild*, as we have seen, regarded itself as a *brotherhood*, not as a mere *neighbourhood*. Though, doubtless, the members of a particular gild often lived near to one another in the same town, they lived together because they were members of the gild; they were not members of the gild because they lived near together. Still more obviously are the *clan* and the *tribe* personal, not territorial associations.

2. **Exclusiveness.**—This feature of patriarchal society is a natural result of the former. Normally speaking, the only means of obtaining membership of a race is by being born into that race. Patriarchal society went so far as to admit the case of *adoption*, or fictitious birth, under carefully guarded rules. But it would have recoiled in horror from the casual hospitality which a modern State extends to all tolerable immigrants. Modern States believe in large numbers; patriarchal communities do not. Some people are inclined to think that patriarcal society was right. It is a question of whether it is preferable to maintain purity of race and be extinguished as an independent community, or to admit alien blood and prosper. The history of the world shows that these are the inevitable alternatives. Racial exclusiveness wrecked the so-called "City State" of the Greeks; it very nearly wrecked the budding destinies of Rome. All the world over the rule applies; the pure-blooded races are weak, the mixed races are strong.

3. **Fixity of Custom.**—Custom plays, as we shall see, a large part in modern life; but modern custom is continually

being modified and changed. The custom of patriarchal society is rigid. No doubt it changes a little; but a society whose chief moral duty is to continue the traditions of its ancestors is hardly likely to admit novelty if it can help it. Sir Henry Maine tells a delightful story of an Indian village which had had a water supply provided for it by a paternal British Government. The villagers were notified, as a matter of course, of the official regulations laid down for the proper use of the water. An East End district of London would be only too glad to get a good water supply on such terms. But to the patriarchal society of India the notion that customs could be manufactured by an official pen was simply incredible. And it was not until a wise official induced the village elders (by what means is not stated) to persuade the rank and file that the rules in question were really of immemorial antiquity, though their existence had only just been discovered, that the difficulty was solved. Even the gild prided itself on the antiquity of its statutes, though the gild is, of course, the most modern form of patriarchal society. The caste system of India is the extreme outcome of the rigidity of patriarchal custom. When we speak of the "unchanging East," we allude to countries which are still in the grip of patriarchal principles.

As a consequence of its unchanging character, patriarchal society is also, to a great extent, *non-competitive*. Competition involves innovation at every turn; the successful competitor usually succeeds because he does things in a superior way of his own. Doubtless it is also possible to succeed by doing things in the same way as one's rivals, but doing them better. And to this extent, presumably, patriarchal society is competitive. But the trade offences known as "engrossing" and "forestalling," which are recognized in quite the last stage of patriarchal society, are amusing illustrations of the limited extent to which that society allowed competition. "Forestalling" merely means buying earlier than your neighbours, in order to control the supply of commodities and get

better prices. As its name implies, it is an attempt to buy goods before they reach the *market*. "Engrossing" is simply dealing in a large number of articles, instead of observing the customary restrictions, in order to be able to sell cheap, and so attract custom. It is pathetic to think that the harmless and indeed useful "grocer" of modern times is, in origin, a member of a criminal class.

4. **Communalism.**—Observe, we do not say *Communism*. Patriarchal society is not *communistic*, i. e., it does not refuse to recognize individual rights, nor does it pool the productions of its members and divide them equally. But it is *communal*, in the sense that it is always organized in *groups*. The smallest group of which it takes direct notice is the *household*, which is probably very much larger than our modern household, and may contain two or three generations, with wives, apprentices and serfs. Within that household the higher authority does not penetrate. The same rule is observed in an ascending scale. What the household is to the *clan* or *gild* that the *clan* is to the *tribe*. With us, the supreme authority can control directly the actions of any individual. The reason for that change will shortly appear. But in patriarchal society the tribal chief, after the break-up of the tribe into clans, communicates directly with the clan chiefs only, except that he probably has a clan of his own of which he is tribal head as well as clan chief. The clan chief, likewise, communicates only with the heads of households within his clan; to the heads of households belongs the control over the dwellers within their walls. But we really err in comparing the position of any patriarchal authority with that of a modern State official. The latter is wielding the power of a despotic ruler, whether that ruler be an individual or a parliament. The former is merely administering the customs of his race.

TYPE III — MODERN (POLITICAL) SOCIETY

CHAPTER VIII

The State and Feudalism

THE origin of the *State, or Political Society*, is to be found in the development of the *art of warfare*. It may be very sad that this should be so; but it is unquestionably true. Historically speaking, there is not the slightest difficulty in proving that all political communities of the modern type owe their existence to successful warfare. As a natural consequence, they are forced to be organized on military principles, tempered, doubtless, by a survival of older (patriarchal) ideas. Happily, there is a good side, as well as a bad one, to military life.

Development of warfare.—The question may naturally be asked at this stage—How came military principles to receive such a startling development after society had, apparently, succeeded in organizing itself on more peaceful lines? Fighting there had always been, of course; wars between tribe and tribe, clan and clan, even between village and village, town and town. But this was more in the nature of a *feud*, a sort of standing quarrel which broke out again and again, and then slumbered for a while; it was nothing like the organized and determined warfare which resulted in the formation of States. It may be described as *amateur* rather than *professional* fighting.

Increase of population. - Although we cannot speak with certainty as to the causes of this development, it is

not difficult to suggest one or two facts which may have led to it. First and foremost comes the *increase of population*, with its consequent pressure on the means of subsistence. This increase is always, under normal circumstances, steadily going on; and it is dealt with in various ways. Sometimes a pestilence breaks out; and the superabundant population, enfeebled by short allowance of food, is swept away by disease. Sometimes wholesale *migrations* take place to less thickly populated districts; this may be regarded as a real *remedy*, though perhaps only a temporary one, for the trouble. Sometimes, again, a great new invention enables a largely increased food supply to be produced; the changes from hunting life to pastoral life, and again from pastoral life to agriculture, are examples. Finally, war may break out on a large scale; and the weaker peoples may be either exterminated or (more probably) reduced to subjection by the stronger.

Increase of wealth.—Another cause may have been the great increase of *realized wealth* attendant upon successful agriculture, and, still more, industry. Pastoral wealth has this advantage, that it can be moved about with tolerable ease. A weak tribe can fold up its tents, and drive its cattle and sheep out of harm's way. But the wealth of the husbandman cannot be so disposed of. His wealth is in his fields, which he has patiently cultivated, and in his barns and presses which he has filled with corn and wine. He has built himself a permanent *house*, and he will not leave it while a chance of safety, or even of existence, remains. He is a very tempting bait to the military adventurer. Still more is the *craftsman*, with his rich store of wealth, a tempting object of plunder. The sack of an industrial town, with its shops and its stores of goods, is the dream of the freebooter. *Wass für Plunder!* was Blücher's exclamation when he was shown London from the dome of St. Paul's. It was the old instinct of the professional soldier.

Improvement in weapons.—Once more, it is natural to suppose that the improvement in the art of working in metals did much to stimulate the military spirit. The superiority of iron, still more of steel weapons and armour, over the old wooden bows and arrows and leather shield and corselet, would give a natural impetus to warfare. Above all, with the tendency towards *specialization* which, as we have seen, is one of the master principles of development, this improvement in the means of warfare would tend to produce a *special military class*, the professional warrior of the modern world. In primitive times every man was a soldier; as civilization progressed, the bulk of people became interested in other things, and fighting became the work of specialists. This fact is directly connected with the origin of the *State*.

The German war-bands.—In the interesting account given by Tacitus of our Teutonic forefathers in their ancestral homes, we notice one very significant feature. Not only does the historian distinguish between the *princeps*, or tribal chief, who was chosen for his noble birth, and the *dux*, or war leader, who was chosen for his valour; he shows us the latter surrounded by a band of adventurous companions, who took no part in the ordinary pastoral life of the tribe, but were constantly engaged in warfare, either in defense of their own tribe or in plundering expeditions against strange tribes. These "companions," as they are called, were fed at the leader's table, were furnished with food and garments by the women of his household, and shared the *booty* of their leader's expeditions. The devoted loyalty which they displayed towards their leader is described in a spirited and well-known passage. They counted it a disgrace to leave the field alive if he was dead; their dead bodies were found thickly piled around his in the disastrous day of defeat. It is probable that, at first, this band of companions was composed mainly of the kinsmen of the leader, his *gesiths*, as

the Saxons called them; but ultimately they became simply volunteers who joined the band from love of adventure and a military life. They were the *thanes* (or servants) of the *heretoch* (or host-leader.)

Foundation of states.—A *State* is founded when one of these host-leaders with his band of warriors gets permanent control of a definite territory of a considerable size. And, practically speaking, this always occurs in one of two ways.

Consolidation.—The host-leader, after firmly establishing his position as ruler of his own tribe, extends his authority over neighbouring tribes, until he becomes ruler of a large territory. This is what seems to have happened in the England of the ninth century, when the so-called "tribal kingdoms" of the Heptarchy, after fluctuating for many years between the *Bretwaldaship* of the various tribal chiefs, became more or less consolidated by conquest in the time of Egbert. The same movement showed itself also in the neighbouring country of Scandinavia, where, also in the ninth century, the innumerable tribes became gradually consolidated, as the result of hard fighting, into the three historic kingdoms of Norway, Denmark and Sweden, under Harold Fairhair, Gorm the Old, and Eric of Upsala, who, as the *Heimskringla* strikingly puts it, subdued all rival chiefs "with scatt (taxes), and duties, and lordships." Much the same appears also to have been done in the gradual consolidation of the Celtic tribes of Scotland under the line of Malcolm Canmore, and of the tribes of Wales under the hereditary Princes who were found to be ruling the country at the Norman Conquest. In Ireland the trouble was that no successful warrior succeeded in making permanent a powerful dynasty. And, in central Europe, the too ambitious efforts of the Frankish warriors, Clovis and his successors, though brilliantly successful at first, resulted finally in a similar period of anarchy, which is known by the expressive name of the

"Dark Ages." In fact, the State formed by *consolidation* is always rather liable to break up into its former elements.

Migration.—Or a State is founded by the successful *migration* and *conquest* by a band of warriors to and of a strange country. This was the history, in very early times, of the foundation of the kingdom of Lombardy (a Teutonic conquest of a Latin land); likewise of the Visigothic kingdom of Spain. Somewhat later it was the brilliant history of the *Normans* or *Northmen*, who, in the ninth century, became the ruling power in Russia; in the tenth founded the practically independent Dutchy of Normandy; in the eleventh the new kingdom of England; in the twelfth the kingdom of the Sicilies, and the short-lived kingdom of Jerusalem.

Character of the State.—The new type of community formed by these events differed fundamentally from that which preceded it. In the first place, it was essentially *territorial* in character. Though its rulers for some time continued to call themselves by tribal names ("Kings of the English," "Kings of the French," and so on), in reality the limits of their authority were the limits of their territories. Whosoever lived, nay, whosoever happened to be, within their dominions, was their subject, their *subditus*, or subdued man, bound to obey their commands, and especially bound to obey their call to arms. The life of the new community was *military allegiance*, that faithful obedience to the orders of a commander which had enabled the conqueror, with the aid of his devoted followers, to place his foot on the necks of the conquered tribes. Race feeling, no doubt, long counted for much; no prudent ruler could afford to neglect it. But it was no longer the essential bond of unity. To begin with, the ruler and his chief followers were probably of different blood, perhaps even of different religion and speech, from the mass of the subject population. Apart from this fact, the successful warrior, knowing the value of numbers, was always trying

to import new followers, about whose race he cared little, provided only that they could be relied on to do good service, either with the sword or the pen. Finally, being generally a man of superior enlightenment, the new ruler was often anxious to throw open the country to foreign adventurers, whether merchants, ecclesiastics or teachers, believing that his fame and wealth would thereby be increased. This policy was, as is well known, the cause of much trouble in the early days of the State; but the new spirit ultimately got its way.

New type of religion.—Again, the *exclusiveness* of the old tribal systems was rudely broken down. It had rested mainly, as we have seen, towards the end of its history, on the system of *ancestor worship*. But the establishment of the western State was curiously coincident with the triumph of a new type of religion, the chief characteristic of which was *universality*. It may sound, at first hearing, ridiculous to associate the meek religion of Christ with the aggressive military institution of the *State*. Yet it is quite certain that Christianity had a great deal to do with breaking down tribal prejudice, and with the establishment of great political communities. To take the first and most glaring example which presents itself: The conversion of Clovis to Christianity was intimately connected with the formation of the brilliant, if short-lived, Frankish empire. The heathen Burgundians and Saxons were overcome by the Christian Franks. In the name of Christianity, Charles the Great rolled back the tide of Saracen invasion from the Pyrenees, and established the frontiers of *Christendom*. Though Christianity in its earliest days had been a mission to the poor and lowly, its great conquests in northern and western Europe were due to the conversion of kings and princes. The conversion of Æthelbirht of Kent was the signal for the conversion of England. Christianity passed from Court to Court of the Heptarchic kingdoms. And Christianity well repaid the favour of

princes. Under the cry of "one church and one king," the older tribal divisions were ultimately wiped out, and England became one nation; with *Church* and *State* in intimate alliance. Even more obviously had Mahommedanism the result of breaking down tribal divisions, and establishing mighty kingdoms, like the kingdom of Akbar in India, the kingdom of Ismail in Persia, and the kingdom of Mahomet at Constantinople.

The new nobility.—Once more, the new political organism, the *State*, no longer regarded *custom* as its guiding star. By its very nature militarism is *competitive;* for competition means strife, and strife is of the very essence of war. Mimic warfare may be conducted according to fixed tradition; but, in that case, it is rather *sport* than war. Real war is a death-struggle, and each combatant will strain every nerve to gain the advantage. If any one will show him a new dodge for defeating his enemy, he will take it and be thankful. He will not ask if it is consecrated by the wisdom of his ancestors. Even the very modern humanitarian spirit has only succeeded in making slight inroads upon the fierce competition of war; and if it succeeds in making further or serious inroads, it will destroy war, or reduce it to the level of a sport, which is, of course, its object. The founders of the State were, as we have seen, all successful warriors, who had won success by new combinations, new methods, daring disregard of tradition. It was hardly probable that, under their *régime*, the old traditional, customary life would be continued. Their watchword was *ability*, not custom. If they saw a man who could fight well, or write well, or sing well, they called him to their courts, regardless of his race or social rank. They knew that their position was precarious; they could not afford to leave any stone unturned to ensure their safety. And one of their surest measures was to surround themselves with the ablest men on whom they could lay their hands. All over Europe the break-up of patriarchal society is marked by a striking change in the

idea of *nobility*. The old *nobility of birth*, and *wealth*, the members of the sacred families of the *tribe* and *clan*, the great lords of cattle, are replaced by the *royal nobility*, whose hall mark is the choice of the king. In the Barbarian Codes which tell us so much of early Teutonic society, the *Atheling*, or hereditary noble, is displaced by the *antrustion*, or royal servant. The latter may even have been at one time a slave; it is enough that the king has recognized him as a *comes*, a member of his band of followers. In England the tribal *ealdorman*, in Scotland the *Ri* or *Mormaer*, give way before the *Earl* or simple *thane*. Doubtless, in many cases, the change was more apparent than real. Doubtless the tribal chief was willing to accept a title of nobility from the king; just as the Irish chiefs of the fifteenth century, the O'Donnells and the O'Neills, became the Irish earls of the sixteenth century, the Tyrconnels and the Tyrones. But the difference was none the less significant; and it paved the way for further change. It marked the triumph of the *State* over the older patriarchal society.

Feudalism.—And, finally, the *State* was *individual*, not *communal*. Again we must be careful not to misunderstand terms. The dream of the despot, who would like to govern every man in his dominions by the immediate action of his caprice, is, happily, never realized. But the *tendency* of the State, from its very inception, was to break down all intermediate barriers between itself and its individual subjects. Every wise ruler is, however, aware that this can only be done by degrees. The warriors who founded successful States, whether they were alien adventurers or enterprising war leaders of neighbouring tribes, found various degrees of authority in existences among their subjects, exercised by men who had been accustomed to deference, if not actually to obedience. These men were rarely dispossessed by the conqueror, unless they persisted in refusing all overtures. The conqueror merely insisted that they should *acknowledge their authority to be derived from him*. This seemed to be

such a purely theoretical matter that the transaction was usually attended with little difficulty. Even where the demand of *fealty* or faithfulness was accompanied by a demand for tribute, there was little practical difficulty; the conquered chief reckoned with shrewd accuracy on getting the money out of his followers, the humbler members of his tribe or clan. If the conqueror chose to regard the land occupied by his tribe or clan as a gift or trust for the conqueror himself, it did not seem to matter much; the important point was that the tribe or the clan still kept its land. Where the native chief was irreconcilable, or had been killed in the struggle, the conqueror put one of his own "companions," his *comes* or *thane*, into his place; and thus, of course, obtained a really stronger hold on the conquered territory. Quite naturally, the conqueror's immediate *vassals* (as we may now begin to call them) found it convenient to repeat the same process with *their* inferiors. We have seen, in fact, that there were the germs of such a relationship in the practice of *cattle lending* practiced by patriarchal society (p. 34). But then the adoption of agriculture made *land* the important factor in society; and so *loans of land* became the signs of subordination. Sometimes the transaction was genuine; as where one man loaned to another land which he was really entitled to keep for himself. Very often, however, it was merely fictitious; as when the inferior yielded up his own land to his superior, and received it back again from him as a loan. The practice, known technically as *commendation*, was very common in Continental Europe in the Dark Ages, and was primarily due to the fact that, in times of disturbance, the best chance for the weak man is to acknowledge himself the vassal of a strong man, who will protect him. But the tendency spread beyond cattle and land. The customs of a *gild*, or a number of *gilds*, their cherished rights of controlling their own members and excluding strangers from the town, came to be held as privileges granted by a ruler; and so town

life was brought within the same idea. Finally, even such a thing as spiritual office (with the emoluments attaching thereto) was held as a gift or loan from a superior; and so indeed the technical name for such a gift or loan, a *benefice*, came to be specially associated with spiritual office. Thus the whole social organism gradually assumed what we call a *feudal* aspect, in some respects resembling the old patriarchal organization of groups within groups, but differing from it in the important principle that the rights of the individual were no longer acquired by *birthright*, by membership of a social group, but were at least deemed to be the grant of a *superior*, in return for promised *service*. In the higher ranks, of course, that service was *military;* and in this the new system showed its connection with the newer type of society. But in the lower ranks money and labour service were more common. The peasant rendered *labour* or paid *rent* to his lord, in return for his land; the craftsmen of a town paid an annual sum to the king or earl for the charter of their privileges. Even the beneficed clerk owed to his *patron* the duty of saying prayers for the good of his soul.

Evidence.—We shall see more, as we go on, of the nature and consequences of *feudalism*. Here it is sufficient to notice its place in the History of Politics. *It is the connecting link between purely patriarchal and purely political society*. The brilliant historical labours of M. Longnon have, to all intents and purposes, established the geographical identity of the great fiefs of the West Frankish Empire with the tribal settlements of early Gaul. Mr. Skene has been equally successful in showing that the Scottish earldoms and thanages of the eleventh century were really the old tribal and clan chiefships in a feudal dress. Could we but get sufficient evidence, we should no doubt find that the same was the case in England and other countries. Feudal society has often been reproached with vagueness and inconsistency. These are precisely the qualities which

we should expect in a phase of development which is not in itself essential or universal, but which is an easy and convenient means of softening a change. In the popular form of entertainment known as "dissolving views," one picture is not suddenly replaced by another; but the old picture gradually melts into the new by a nebulous and misty process, rather fascinating to watch but not conveying any very clear ideas. In the panorama of History, feudalism represents the blurred outlines and motley colours of the "dissolving view."

CHAPTER IX

Early Political Institutions

FOLLOWING our accustomed plan, having seen how the *State* came into existence, we proceed to examine its *organization*, that is to say, the *institutions* by which its business is carried on. Foremost amongst these institutions stands, of course—

1. **The kingship.**—It is a simple historical fact that the kingship of the modern State is the direct outcome of that process of conquest and migration which founded the State itself. Till the general break-up of things established, which followed immediately on the French Revolution, many of the descendants of the original conquerors of Europe continued to sit on the thrones which their ancestors had established. Now that the chain of hereditary succession has, in most cases, been rudely broken, the position established by the founders of the modern State still exists under other names. Kingship is perhaps the most successful institution of Politics.

But we must be careful not to suppose that the first kings were *institutions;* they were merely *individuals.* The earliest kings were, as we have seen, successful military adventurers, who had managed to conquer territories of considerable size. By their own personal skill and prowess they maintained their position, and enforced what they considered to be their rights. What these rights were we shall enquire a little later; here we are concerned to notice that the communities conquered by the early host-leaders probably

regarded the latter as temporary nuisances, who would in due course be removed by the hand of death. Their position was totally opposed to the old ideas of society; they were much too stern, much too enterprising, much too neglectful of time-honored practice, to suit the easy-going ways of patriarchal society. They represented the future, as the dying patriarchal society represented the past.

Permanence of the kingship.—The kings themselves were perfectly aware of this view. Probably, from the very fact that they were successful warriors, they were men of exceptional ability, not merely in war, but also in the management of men. Leaders like Clovis, and Theodoric, and Alaric, and Egbert, were not likely to make the mistake of supposing that they could permanently maintain their positions by the mere force of military prestige. And so, although they clung tenaciously to their military powers, although the military origin of modern kingship has never really been forgotten, they began to buttress up their authority by appeals to other sanctions.

Absorbs the chiefship.—One of the most skilful of these appeals was the appropriation by the kings of the character and attributes of the tribal chief whom they had conquered or dispossessed. It is possible that, in a few cases, they were, really and truly, members of tribal aristocracies, though probably not of the aristocracies of the tribes whom they had conquered. In most cases, they were simply adventurers, who had obtained their positions by sheer hard fighting. But they soon, by a series of fictions which could only have been accepted in a simple age, persuaded their subjects that they really were members of the ancient families whom they had overcome. The pedigree of an early European king generally led up to some well-known Hero, who had long been regarded with reverence as the mythical ancestor of the tribe or tribes over which he was ruling. A simpler method by which a conqueror attached himself to the tribal instincts of his subjec

was by marrying the daughter of the greatest of the conquered chiefs. Although by strict patriarchal law none of the rights and privileges of a patriarch could go in the female line, the union was valuable for sentimental purposes; and such a policy undoubtedly helped, as it has often done in later times, to strengthen the position of an intruder.

The great result of this skilful borrowing of patriarchal ideas was that the kingship quickly became *hereditary*. We have seen that the position of host-leader was originally *elective*, not, of course, in the sense that it was balloted or even voted for, like the chairmanship of a modern committee, but in the sense that no one was entitled to it by *right of birth*. The host-leader was chosen by the informal adherence of those who admired his valour. But it was essential to the success of kingship that it should become hereditary; and, fortunately, the desire to hand a great position over to one's children is one of the deepest instincts of average humanity.* So all the energies of the early kings were bent towards this end; and their success was due chiefly to their skilful borrowing of patriarchal ideas. The dream of an *elective monarchy* is one of the chimæras of the political Utopian. According to his amiable theory, freedom of election secures the best possible man. In sober truth, as evidenced by the facts of history, it results in one of three consequences. Either the country is torn in pieces by contending factions—the fate of Poland; or the kingship is gradually shorn of its rights and possessions, which are given away as bribes to important electors by ambitious candidates—the fate of the Holy Roman Empire; or, finally, the electors deliberately choose a nonentity, who has no enemies, and who will be an obedient puppet in the hands of wire-pullers. This is the fate of the electoral Presidency of the modern Republic, which is a kingship in

*Modern instances, of course, are to be found; e. g., Cromwell and Napoleon, both of whom tried to make their positions hereditary.

all but name. Only in times of extreme and obvious danger, and even then only when the electors are thoroughly honest, does an election produce a really good king.

Traces of elective monarchy.—As a matter of fact, in the great majority of the European monarchies the tradition of an elective leader lingered for a few generations, with just sufficient vitality to show that it had once been genuine. It resulted, practically, in the notion that an heir-apparent might be rejected for positive infirmity, whether of body or mind. But, though the hereditary *principle* was accepted, it was not the modern but the ancient or patriarchal form of it which for a long time prevailed, and which gave the succession to the eldest male of the royal house, not to the son of the last occupant of the throne. This older form of hereditary succession lingered in Russia until the seventeenth century.

Becomes religious.—By these means the kingship became an *institution*, or permanent machine for carrying on the business of government. People came to look upon it as natural and inevitable that a king should rule over them. But the early kings made another admirable move when they assumed a *religious* position, by allying themselves with the *Church*. We have seen something of the origin of this alliance (p. 78); here it is only necessary to call attention to the well-known fact of the close connection between the *kingship* and the *Church* in the early days of the State. Throughout all Christendom, bishops and priests were the most intimate counsellors and the most enthusiastic supporters of the Crown; and the rich gifts of the kings were amply repaid by the halo of sanctity which the grateful Church threw around the person and office of the king. From the day of his accession, when the sacred oil was poured upon his head, to the day of his death, when his grave was blessed by the Church, the monarch was surrounded and guarded by ecclesiastics. In Oriental countries, in Mahommedan States, the union is even closer; for there th

Head of the State is also Head of the Church. But there is actually an example in outlying Christendom in which the archbishopric of the Church has become hereditary in the line of secular rulers; and even in Europe the intimate connection between the king and the Church was the best possible safeguard against any revival of patriarchalism, in connection with ancestor worship.

2. **The Council.**—We have seen (p 75) that in the rude beginnings of monarchy, the host-leader is found always to be surrounded by his *followers* or *companions*, men devoted entirely to his service, on the terms that he shall provide them with maintenance and opportunities for distinction. As the host-leader developed into the *king*, this body of followers became the *council* of the *kingdom*. Placed in the midst of a hostile country, the king and his followers were absolutely essential to one another's safety. Without their support, the king could not hold his conquest; without his master mind, they would fall victims in detail to racial hostility. The success of the king meant the enrichment of his followers; the contentment and prosperity of his followers meant the safety of the king. We may put aside as premature any definite theories about the right of the council, in those early days, to *control* the actions of the king. All our accounts of the relationship between the early king and his council go to show that the former, if he chose to run the risk of becoming unpopular, could do what he liked. Although, perhaps, the council gained somewhat in the eyes of the king's subjects by being regarded as the successor of the old tribal *council of elders*, yet, in reality, it was the body of the *king's servants*, chosen by him at his pleasure. Nevertheless, the existence of the council did soon undoubtedly become a substantial check on the despotic tendencies of the king. A theory grew up that a good king consulted his council frequently, that he listened to its advice. And from this point the step was comparatively short to the doctrine that the king *ought* to consult,

and, finally, that he *must* consult his council. And thus, in reality, the council is the germ of what we call *constitutional government.* But, long before it became a bulwark of popular liberties, the council had rendered invaluable service to the *kingship* as an *institution*, and this in at least four ways.

(*a*) **It preserved the continuity.**—Kingship may be perpetual; but, in fact, the individual king dies. And, between the death of one king and the succession of another there lies a critical moment. The forces of anarchy are ready to break out. "The king died on the following day . . . then there was tribulation soon in the land, for every man that could forthwith robbed another," says an old chronicler. There is always the chance that old ideas may revive, and set people longing for the good old days when every one did that which was right in his own eyes. We must remember that a successful monarchy really does run counter to a good many cherished practices. It does not, for example, permit of blood-feuds or tribal forays; it probably has incurred the resentment of old religions; it has sanctioned practices which ancient prejudice regards as monstrous; it has, probably, exacted a good deal of tribute. So there are always people waiting for a good opportunity to revolt against it. But the existence of the *council* tides over the dangerous moment. Though in strict theory the death of the king dissolves his council, in fact the members of council hold together, in hopes of being appointed by his successor. And, in the meantime, they keep the political machine going.

(*b*) **It preserved the traditions.**—One of the greatest dangers to the newly-established kingship is the risk of offending its subjects by exhibitions of *caprice.* It has to deal with a community living according to immemorial *custom.* It is bound to effect alterations to a certain extent; but, if it is wise, it will do so as little as possible. Above all, it must avoid *unnecessary* changes. It is almost better,

under some conditions, to persevere in a bad policy than to change it for a good one. The average man, especially if he be of a patriarchal type, suspects and hates change. But a body of councillors is far less likely to be capricious than a single ruler; its members will possibly have something to lose by a change of policy. Its influence will, in the vast majority of cases, be against change.

(*c*) **It broke the obloquy.**—As we have said, government, especially a newly-established government, is bound to be unpopular, at least to a certain extent. If the whole of the criticism provoked by its acts were to fall on the head of a single individual, his position would become very precarious. But if the blame can be distributed amongst his advisers, or if even, in extreme cases, one or more of these advisers can be sacrificed to the popular discontent, much will be gained by the Head of the State. Being an *impersonal* authority, a council can stand criticism much better than an individual. This may not be a very dignified or enjoyable function of the council, but it is a very valuable one from this point of view of the State.

(*d*) **It increased the activity.**—The limits of the activity of a single individual are soon reached. Even a king like Frederick the Great cannot know personally very much of what is going on in his dominion. But he would know still less if it were not for his councillors. By their own observations, and through their agents, they find out things which are going on, and repeat them to the king. As with knowledge, so with action. The king can, personally, do but little. Even in early days, when the king was still, in the main, a warrior, he could not personally protect all his dominions at once. Still less could he, when the business of his position became (as it did become) enormously increased, conduct it all himself. But his council could be increased to any size; and thus he could, as it were, provide himself with an unlimited number of hands.

3. **The local agents.** — Hitherto we have assumed that the king's councillors have, save for short intervals of absence, surrounded his person, either on the battle-field or in the palace or hall. This was, as we have seen, the old idea. The war-leader's companions, in time of peace, fed at his table and lived in his house. And the idea has never been abandoned. The *Court* of the monarch, even in modern times, is actually in attendance on the person of the king. But, when the freebooting leader became the *king* of a *territory*, he required supporters, not only round his throne, but also all over his territory. We have already, in the preceding chapter, had a glimpse of the readiest plan. The conqueror accepted the allegiance of such of the old patriarchal authorities as were willing to submit to him, and continued them in their old positions, *as his representatives*. It was a dangerous practice, though, perhaps, less dangerous than forcible dispossession. The king felt safer where the circumstances allowed him to place one of his own trusted followers in the room of a dead or banished chief. And, as the old nobles died out, the policy of replacing them by the "king's thegns" was steadily pursued, until, by a silent but revolutionary process, the country had been mapped out into districts, each in charge of a representative of the central government. In all probability the districts themselves would be little changed. In England, for example, the local divisions which existed until the beginning of the present century represented in the main the ancient units of patriarchal society. The *county* or *shire* was, in many cases at least, the district of a tribal settlement—Sussex of the South Saxons, Dorsetshire of the Dorsætas, Somerset of the Somersætas, and so on. In other cases, as Dr. Freeman pointed out, it was an artificial district commanded by a fortified town, such as Bedfordshire, Huntingdonshire, Derbyshire, and so on. But this was a much later formation. And there are strong reasons to believe that the *hundred*, the other great local division of

the Middle Ages, will ultimately be proved to have been the territory of a clan. In later times, of course, the subdivision becomes more minute, and we get the single *manor*, under its *lord;* but enough has been said to show how feudalism began.

We must not, of course, suppose that the man who was placed in charge of a local district was entirely excluded from the *Council* which surrounded the person of the king. On the contrary, there seems to be little doubt that the greatest of the king's subordinates, the earls in England and Scotland, the dukes and counts on the Continent, always sat, as of right, in the Council, at any rate on its solemn days of session. We distinguish in the *Witan* of the Anglo-Saxon kings, beside the royal princes and the great ecclesiastics, two classes of people, the *ealdormen* and the *thegns.* The former undoubtedly had a local position as heads of the shires; the latter were, probably, the humbler followers of the king, who lived permanently at his court. But it is unlikely that the smaller local representatives, the "landed thegns" (as we may call them) sat in the Council.

To conclude this chapter, we may ask, What were the duties imposed upon these local representatives by the early kings? And we shall hardly get a better answer than by referring once more to the picturesque words of the *Heimskringla*, which describe Harold Fairhair as subduing all Norway "with scatt, and duties, and lordships."

(*a*) **Scatt** or **Tribute** is, of course, one of the prime objects of the conqueror. Historians sometimes speak of primitive warriors as though they fought simply for the love of fighting. No doubt there are some races—for example, the Maoris of New Zealand half a century ago,—to whom the excitement of the battle seems really to be an end in itself. But in the majority of cases, ancient and modern, the stimulus of an aggressive war has been either *revenge* or, in one form or another, *plunder.* Sometimes the plunder has been merely of a temporary kind, as in the

raids of the Vikings. But the warrior who is a little more far-seeing than the Viking looks forward to systematic and continuous plunder. To this end, he establishes a kingdom; and when he has established it, he sets to work to exact a steady supply of *tribute*. Doubtless, to a man of the temperament we have tried to describe, there is something in itself attractive in ruling over a mass of subjects. But the notion that a ruler lives for the good of his subjects is a very rare development in the early days of the State. The real importance of tribute in the beginnings of political organization may be most vividly realized in the Mahommedan States of the East, such as the Empire of Akbar in India in the sixteenth century, and in the Persian and Turkish Empires at the present day. As Mr. Baden Powell has well pointed out, it is, in its origin, primarily a levy on agricultural produce, a "share of the heap on the threshing-floor;" and, in the case of the Moghul Empire, it rose as high as one-third of the produce. In the harder-won conquests of the founders of the European States, a more decent disguise was adopted. The conquerors appropriated the customary offerings made by the tribesmen to their ancient chiefs, the *food rents* and *feastings* of patriarchal times. Also they appropriated the lands which had been set apart for the maintenance of the patriarchal chiefs, and let them out to tenants of their own who paid them a return in money or kind. They established, probably also by virtue of ancient custom, their privileged claims to certain profitable incidents, such as "royal" fish, mines of precious metals, the contents of wrecks, and the great game of the forests. All these miscellaneous items, lumped together, were known in England as the "farm of the shire;" and long formed the bulk of the royal revenue. Sometimes a more direct demand was made of an additional sum for a special purpose, e. g., the Danegelt in England, and the *Dîme* in France. Privileged towns paid, as we have said (p. 82),

substantial sums in return for guarantees of their trade privileges. Only, in western Europe, there was always some decent excuse, such as custom or bargain, for a demand of tribute; the Oriental meekness, which submits to the absolute demands of the States tax-gatherer, has hardly been known in the arena of modern civilization.

(*b*) **Duties.**—Besides tribute, the conqueror has one other imperative need; viz., *military service.* He has, of course, his own special followers, his "professional soldiers," as we might say; and he takes care to recruit their ranks by making it worth the while of the most enterprising young men among his subjects to join the service. But, besides this volunteer army, he must have a reserve defensive force, in case some rival warrior should attempt to repeat at his expense the experiment which he has successfully conducted at the expense of others. And so he lays it down generally that every man is bound to serve if called upon — the able-bodied as combatants, the feebler as makers and repairers of roads, bridges and forts. Often an invidious distinction is drawn between those who are actually expected to serve, and those who are debarred by reason of social inferiority or heterodoxy in religion. But these do not escape; they are subjected to a special tax in lieu of service. The practice afterwards spreads, and a general commutation of war-service for taxation is adopted. Then, perhaps, after a few generations, a reforming king renews the liability to personal service — but the taxation is not remitted.

(*c*) **Lordships.**—These were, in fact, the great and charactistic engine by which the head of the State obtained his taxes and duties. In days in which means of communication were very imperfect, it was impossible for the central government to keep in touch with all its subjects. And so, as we have seen (p. 80), the conquered territory was parcelled out among the followers of the king, either his own fellow-adventurers, or patriarchal authorities who had

accepted his rule. From the point of view of the king, these officials were servants; but, from the point of view of the inhabitants of their districts, they were *lords*. In order that they might fulfil their tasks of collecting tribute and soldiers, they were allowed to exercise a good deal of authority over their districts. This authority, no doubt, in many cases was looked upon, by themselves and their subjects, as being of the old patriarchal character; but by the king it was always carefully treated as a delegation from himself, and, in fact, it was largely the knowledge that the local potentate would be backed, if need were, by the royal army, that made his administration effective. As the patriarchal nobility died out, the royal character of the local official became more and more obvious; until at last he came to be looked upon exclusively as a royal nominee, unless, indeed, as not unfrequently happened, he tried to set up on his own account as a feudal magnate.

Not only, however, was the local authority responsible for tribute and for soldiers; he was also answerable for the *peace of his district*. It is one of the most honorable traditions of monarchy, that it has everywhere set its face against internal disorder. In patriarchal times, as we have seen, a man was guaranteed against violence by his tribe, later by his clan or gild. But this protection virtually resolved itself into a liability to exact *revenge;* and the plan did not, therefore, tend to complete tranquillity. The monarchy, in its earlier days, preferred to entrust the maintenance of security to its own agents, at any rate in the case of the lower ranks of society. And so the local representative of the crown was entrusted with what we should call very extensive *police powers*, and in return his personal safety was protected by exceptional penalties. In the earliest days of the monarchy, the fact that a slain man was a "king's servant" rendered his slayer liable to a three-fold murder fine. Somewhat later the same policy reappeared, in the same condemnation pronounced upon any man who should dare

" to raise his hand against his *lord*. For, with the duty of collecting tribute from the people of his district, with the power of enrolling them for military service, with the exercise over them of disciplinary authority, the State's local representative had indeed become the *lord* of his neighbours; and so the words of the *Heimskringla* are explained.

CHAPTER X

The State and Property

No POLITICAL institution is of greater importance, none has been the subject of greater controversy, than the institution of *property*. There is none, therefore, more fit for the application of the *historical method*, which knows no prejudices and admits no passions, but simply relates facts.

We begin, of course, by asking the question — What is *property?* And, leaving aside technicalities, a good simple answer to the question is, that it is the right vested in a *human being*, or a limited number of *human beings*, to absorb for his or their own benefit the various advantages which can be derived from a physical *subject matter*.

A right. — There are one or two points to be specially noted in this definition. First, what do we mean by a *right?* And, again putting aside technicalities, we may define a right as being a *power enforced by public sentiment*. If I have bought a book in an open and honest way, public sentiment approves of my dealing with the book as I please. In early times, public opinion is expressed only in the vague form of *custom;* in later days, it is definitely expressed in *legislation*, and enforced by tribunals and officials. It sometimes happens that the exercise of a right is opposed to public sentiment, either because there are special circumstances which render a particular application of it unpopular, or because public sentiment has changed. Nevertheless, a right is really the creation of public sentiment, *past or present*.

Vested in human beings.—Again, we have said that property is a right vested in a *human being* or *human beings*. Many of the instincts and desires which have led to the appearance of *property* among mankind are obviously present in the brute creation. No one who has watched a dog bury a bone, or has seen a monkey pilfer nuts, will for a moment doubt this fact. But, nevertheless, we do not speak of animals having *property*. Why? Simply because public sentiment does not support them in the exercise of their desires. We recognize, perhaps, very faintly, the moral right of the domesticated animal to a bare maintenance out of the produce of his labours—"Thou shalt not muzzle the ox that treadeth out the corn." But we do not hesitate, if need be, to withhold the corn, or to slaughter the ox.

In limited numbers.—Again, property is a right vested in a *human being* or *a limited number of human beings*. The essence of it, as its name implies, is the *appropriation*, the making special to an individual or a small group of individuals, of a part of the common stock of things. Sometimes, it is true, we speak of *public property;* but this is really a contradiction in terms. We signify, in fact, that the thing to which we allude *is not any one's property at all*, and, therefore, that any one may use it. When we really mean that the thing in question is claimed by a very large but definite body, we do not use the word *property*, but some word which conveys a different idea. Thus we say that England is the *territory* of the English people. If we called it their *property*, we should at once have to admit that no individual Englishman could have any part of it as his *roperty;* which is notoriously untrue.

Exercised over subject matter.—Once more, these rights must be exercised over physical subject matter, for that alone is really capable of appropriation. In a figurative way we can, of course, speak of *property in ideas;* but the extreme difficulty which we find in protecting such property shows that it differs entirely from property in the correct

sense of the term. Ideas are spontaneous, the same ideas may spring up independently in thousands of minds, they have no definite beginning or ending, they are intangible. How can they be protected by agencies similar to those which we employ for the protection of physical subject matter?

For general purposes.—Finally, the right of property is a right to absorb the *various advantages* (known and unknown) which are derivable from a thing. Here is the real difficulty of the subject, and the key to its history. As the jurists say, property is a *general* right. If I have borrowed a horse simply to ride from London to Putney, I do not speak of him as my *property*. Even if I have jobbed him for a whole season, I do not speak of him as *mine*. It is only when I am related to the horse in such a way that I may, if I please, ride him or drive him, or put him to plough or to work in a milk-cart, may kill him or sell him, give him away or turn him out to grass, in fact do anything with him I please which does not conflict with the public sentiment of the community, that I am entitled to speak of him as my *property*. With the abolition of slavery, there ceased to be *property* in human beings. Yet we all know that one man may have special rights over another, e. g., a master over his servant, a husband over his wife, and so on. But these are *limited* and *definite* rights.

A modern idea.—Therefore, we make a great mistake if we take our very modern idea of *property*, and, looking back into the early history of mankind, expect to find it realized by people in those days. We start with the wrong question. We should not ask—*In whom* was property vested in those days? but, Was there *any property at all?*

If this sounds to modern ears an absurd question, it may become less absurd when we consider a modern illustration. Broadly speaking, the high seas are not, at the present day, the *property* of any one. Why? For the simple reason that, *at present*, the only *advantage* to be derived from them

is the convenience of traffic. And as there is room enough and to spare for all the ships in the world to pass over them, the question of *property* in them does not arise. But we can very easily foresee that it might arise; in fact, we can guess pretty shrewdly the lines on which it will arise some day. If the practice of laying ocean cables extends very much, or if coastal waters no longer supply sufficient fish for the world's consumption, we shall soon have the high seas eagerly claimed as *territory* by different States. And if this occurs, we shall ultimately go a step further, and see the *territory* of each State divided up as *property* among its members, as the advantages to be derived from it increase. We have reached the first stage already, in what are called *territorial waters;* where the advantages to be derived from fishing, shipping and gunning are sufficient to induce States to *appropriate.*

This, then, is the key to the *history* of *property* as an institution — the *growth of knowledge.* As men become more and more awake to the advantages to be derived from the use of physical things, the more anxiously and completely do they *appropriate* them. And thus it was impossible for us to study the history of property until we realized how man's knowledge of the resources of Nature had gradually grown. Now we are in a position to summarize it clearly.

In the first, or *hunting stage,* of society, the requirements of men are limited to hunting-grounds, camping grounds and weapons. Men know that the more the game is hunted in a particular district, the less there will be to hunt. They therefore manifest great jealousy of any interference with their *hunting-grounds.* Similarly, their very existence may depend on a camp with a proper supply of water. They resent, therefore, any occupation of spots which they are accustomed to use for *camping.* Unhappily, the reports of travellers upon *savage society,* though dealing largely with the physical character of primitive *weapons,* do not, apparently, tell us much about the savage's ideas respecting their

ownership. But we shall probably not be far wrong in assuming that weapons were among the very earliest examples of *property;* the frequency with which they were used, the extreme importance of their being kept in good order, the ease with which they could be physically controlled, would rapidly generate the idea of *appropriation.* The germ of property, it must again be said, is *user;* the captured booty is readily shared, but the favourite and often-used weapon is jealously guarded. There is some evidence also to show that religious paraphernalia, such as sacred belts and feathers and stones, are early appropriated to *groups* of men. But a savage's weapon can only be used by *one man at a time;* and so it lends itself the more readily to appropriation.

The hunting country.—If we want to realize the savage's immature notions of the advantages to be derived from *land*, we may take the modern example of a *hunting country.* The Hunt and its Master do not object to people walking over the land, to pasturing cattle and sheep upon it, to growing corn upon it or even to building houses and living upon it. So long as people do not disturb the foxes or put barbed wire, they are regarded with toleration. The Hunt regards the country as its *own*, and jealously resents any trespass by a strange pack. But it does not claim the country as its *property.*

Pastoral stage.—When we travel a stage further we find changes which develop still further the rudimentary idea of *property.* The continued association of the herdsman with his cattle and sheep, his perception of the increased advantages which can be derived from them—their hides, wool and milk—strengthens the relationship between him and them. In this stage, movable *chattels* (i. e., "cattle") may fairly be said to have reached the stage of *property*, even of *individual property.* But so also must *wives, children and slaves.* As we have seen, the perception of the value of human *labour* leads to a desire to appropriate it. The words

which, in primitive law, signify the relation between a patriarch and his cattle, signify also the relationship between him and his wives, children and slaves. It is only in later times that the different classes become differentiated. At first, it would seem that *birth* in the patriarch's household is the normal title to *property*. A very interesting old Swedish formula, in the primitive procedure for theft, makes the claimant say that the ox alleged to have been stolen was bred and reared in his stall. But it is probable that, as the tribe broke up into clans, and the clans into households, the old idea that booty was the general prize of the pack died out; and the successful cattle-reiver appropriated the captive of his own hands. Finally, as the notion of *exchange* developed, a man claimed that which he had taken in exchange, or *bought;* but there is abundant evidence to show that, even in historical times, *purchase*, especially of flocks and herds, was looked upon with great suspicion, and that the man who was found with a strange ox in his possession ran a strong risk of being branded as a thief. Only in *markets* and such like well-known places, and before proper witnesses, could a sale be safely conducted. And in English law at the present day, the *sale in open market* has a very special force, which reminds us of this ancient rule.

So far, then, we may tabulate our stages in the history of *property* thus—

(1) User.
(2) Production.
(3) Seizure (perhaps).
(4) Exchange.

Agricultural stage.—Now we have arrived at the agricultural stage. And here, it is evident, we are on the brink of a great development of the idea of *property in land.* The *pastoralist* regards his "country" much as the hunter. It is the feeding-ground for the herds of the tribe. Perhaps the jealousy of strangers is a little keener, because tame

cattle are easier to steal than wild game. Probably, also, the user which the individual tribesman may make of the tribal land is more strictly defined. But there is as yet no individual right in land, for land is still regarded only as pasture and hunting-ground; and there is no need of partition for these purposes. But the agriculturist soon forms new ideas. As each new improvement in cultivation makes land more valuable, the clan, or the family, or the man who made the improvement, becomes less willing to see it pass into the hands of others, less willing to move on to other land on which less labour has been expended. And so agricultural land became, as we have seen, appropriated to the clan amongst whose members it was periodically interchanged; and, finally, even this redistribution ceased, and the family, ultimately the individual, became permanently associated with a specific piece of land.

Still far from modern ideas.—This is a long step; but it is still very far from bringing us to the modern notion of *private property in land.* All that we have arrived at is, that the same man may go on year after year ploughing the same piece of land, and, it may be, his children after him. That would not satisfy the landowner of the present day.

Limited user.—Observe, in the first place, the man may only use the land for *agriculture.* It is true that one of the first real social results of agriculture was to substitute the wooden house for the herdsman's tent; and the farmer was allowed to build himself a house in the village, and to inhabit it permanently. Also he was allowed to *enclose* a little *toft* or garden space, and a *croft* or meadow, both near his house, for the supply of his family and domestic animals. But the bulk of "his" land (if we may call it so) he had still not only to plough and reap, but to plough and reap in the regular way at fixed times. (See p. 53.) If he had not, his fellow-villagers would have complained. If he had attempted, for example, to keep cattle and sheep in his strips, he would have ruined their crops; and he would

likewise have incurred the jealousy of those members of the clan who still longed for broad pastures, and who regarded the new practice of agriculture with dislike. The world's history is full of this quarrel, from the days when patricians and plebeians in Rome fought over the State lands, to the days when the *squatters* (sheep-farmers) of Australia were at loggerheads with the *selectors* (agriculturists) over a precisely similar question.

No alienation.—Again, the farmer had his house and land, but he might not sell them. The agricultural village of primitive times was, as we have explained (p. 60), a very "close" thing. No strangers could get a footing in it, at least without the unanimous consent of the village. And the members of the clan would not want to *buy* lands, because they could get them for nothing.

Action of the State.—But the appearance of the *State*, combined, no doubt, with economic influences, accomplished the final stage in the evolution of *property*. The results of its policy may be said to have been two-fold. It created a *landlord class*, and it dissolved the *village community*.

1. **Landlordism.**—As we have seen (p. 91), one of the earliest measures of the State was to plant its representatives in the various localities of its territory, for the purposes of exacting tribute, levying soldiers and maintaining order. We may be fairly sure that, when the State made their appointments, it had no clear intention of converting the districts entrusted to its representatives into *property*. When the Crown at the present day appoints a man Collector of Customs at the port of Liverpool, or Lord Lieutenant of the county of Surrey, it does not make him *owner* of the soil on which Liverpool stands, or of the county of Surrey. In the language of early times, it was *lordship* the State meant to confer, not *property*.

Inheritance.—But this lordship tended to *ripen* into property. In the first place, the State's representative, as

we have seen (p. 91), probably was either a tribal or a clan chief, or stood in the place of one. But the position of a tribal or clan chief was *hereditary*. It is not surprising, therefore, to find that *lordship* became hereditary also; much in the same way as the Crown itself had done (p. 86). This was, of course, one of the most striking features of *feudalism*. But an office which can be inherited soon begins to look very like *property*.

Rent.—In the second place, the Crown's representative had to pay a certain sum of money as the equivalent of his *lordship*. If he did not, his lordship was taken away and given to some one else. In well-governed countries, the amount which had to be rendered was fixed and reasonable; but this very fact quickly tended to obscure its origin. In the course of a few generations, the representative would come to look upon his district as *his own*, subject to payment of a fixed return, or *rent*.

Profit.—For, in the third place, the State's representative was from the first intended to make a *profit* out of his office. The wholesome system of paying State officials by fixed salaries, and rigidly demanding an account of all receipts, is a very modern innovation; and, even now, is very far from complete, even in civilized countries. In the early days of the State, the universal practice was to *compound* with the official for a fixed sum, and to let him keep all the surplus which he could collect. There was, therefore, a direct inducement to the official to increase his demands upon the people he was set to govern. And this, also, caused him to look upon his district as *his own*.

Land.—Finally, it must again be remembered that almost everything in the way of taxes in early times came directly from the *profits of agriculture*. In other words, it came direct from the *land*. It was natural, therefore, that the Crown's representative should look to the land of his subjects as the real security for the tribute he intended to collect. And this point of view had two important results

as population increased and land became, accordingly, more valuable. It made it very tempting for a lord to turn out one occupier who did not pay his tribute. It also induced him to encourage people to bring fresh land into cultivation, because such a course meant *more tribute*. Such fresh settlements were made at the lord's direction, and, of course, within the limits of his district. By thus dealing with and disposing of the land of his district, the lord became more and more to look upon himself, and to be looked upon, as the *owner* of his district. The "lord of land," as the old documents call him, became the *landlord* of modern times.

It may be said by hasty observers that there is nothing really of importance in this change, that it is really the old set of things with a new set of names, that "lord," and "man," and "tribute," merely become "landlord," and "tenant," and "rent." But a moment's thought will show this to be a fallacy. It assumes that the *value of land will always be the same;* whereas it is notorious that the value of land steadily increases with the increase of population, i. e., with the demands made upon it. And the question is, *Who is to have the increase in value*, or, as it is often called, the *unearned increment?* Let x represent the total annual value of an acre of land in the thirteenth century. Let a represent the amount which the State gets in tribute, b the amount received by the "lord" (over and above that which he pays to the State), y the amount pocketed by the occupier; and suppose a, b and y together just equal x. Now step forward six centuries. The value of the annual produce of that same acre may possibly be quite five times x. Improved methods of cultivation have rendered it much more productive, or coal has been found under it, or it has been wanted for building, or a valuable spring of water has been struck on it. Into whose pockets does this increase go? And, broadly speaking, all the world over, this increase has gone into the pockets of the landlord class, who have succeeded in treating the land as their *property*. As a general

rule, they have succeeded in preventing the State from increasing the sum payable to it by themselves; only in a comparatively small number of cases have their "tenants" succeeded in preventing them exacting increased tribute, in the form of *rent*. The consequence has been that, whilst the State above and the tenant below have gained comparatively little from the increase in the value of land, the intermediate, or landlord class, has become enormously wealthy, especially in those countries in which progress has been greatest. Landlordism has been the most splendidly rewarded of all political services. The class which began as revenue collectors, and local maintainers of order, has become *owners* of the soil, and arbiters of the comfort and prosperity of millions of human beings. In the old centres of industry the position of the landlord is much less marked, inasmuch as the old tribute pressed less heavily on the urban classes, and they were less dependent on a particular piece of soil for their existence. Nevertheless, the existence of valuable market rights, tolls and other town privileges in the hands of great proprietors reveals the fact that the tendencies in the town were the same as in the country, though the opportunities were less. And, where towns have grown up *since* the development of the institution of *property* in *land*, the profits reaped by the fortunate landlords who have owned *property* in their sites have, of course, been colossal

2. **Dissolution of the village community.**—It would, however, be quite wrong to suppose that the development of *lordship* into *landlordship* is solely accountable for the institution of property in land. It accounts chiefly for great landowners; but there are small landowners as well as great.

In a sense, as we have seen, the ordinary villager of the early agricultural epoch was in one sense a *landowner*. That is to say, he probably could not, in most cases, be turned out of his land so long as he conformed to the village cus-

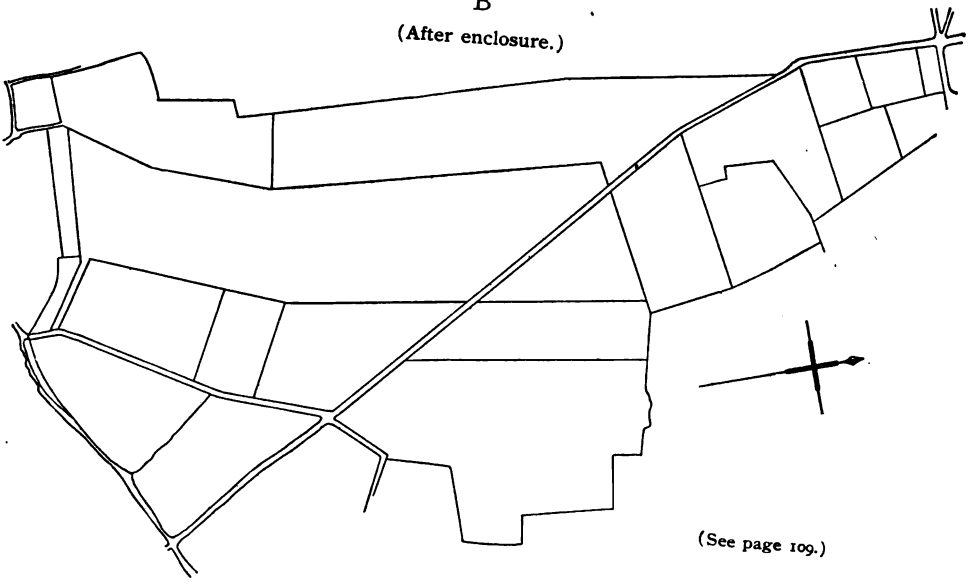
toms, so long as he paid, in the form of labour or money, his share of the village liabilities, and so long as he conformed to the customs of the village. But he had not the two important rights which every owner of *property* now looks upon as part of his ordinary powers; viz., the right to dispose of his interest by sale or gift, and the right to use his land as he thinks fit. Under these two heads we may consider the dissolution of the *village community*.

(*a*) **Disposal of interest.**—From the beginning of its history, we find the State manifesting a dislike to the village community. The military character of the State inclines it to deal with *individuals* rather than with *communities*. It prefers to deal with the village through the individual *lord*; where it recognizes the existence of the village group, it deals with it through its *representatives* (as we shall hereafter see). In the minds of the early kings there was, manifestly, a feeling that the existence of the village brotherhood was, in a way, a danger to its own authority. There are abundant traces in the Barbarian Laws of a determination on the part of the kings that the village shall not take upon itself to punish its own members. Another claim the kings obstinately insist upon; viz., that a stranger, furnished by them with "letters of settlement," shall be allowed to take up land in the village. In early times there was no physical difficulty in such a course; land was plentiful, on the borders of every village there was waste land. But it was hateful to the villagers, just as hateful as it would be to a modern household to have a "paying guest" forcibly thrust upon it. The newcomer might be a spy in disguise; to a certain extent the village would be responsible for his misdeeds; he would probably have new-fangled notions of farming. But the kings got their way.

Sales.—A still further step was taken when the State began to recognize *sales* of village land, at any rate, sales to *outsiders*. There is some reason to believe that, inside the village group, a process had long been going on by which

B

(After enclosure.)



(See page 109.)

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several holdings had accumulated in a single hand. In this way we may account for the appearance of the prosperous *yeoman* class, which is such a striking feature of the later Middle Ages in Europe. But to sell to a *stranger* was long forbidden, and only after a severe struggle was the right established. There can be little doubt that the most powerful of the State in this matter was the *Church*, which, though provided for to a certain extent within the village itself, by the custom of paying *tithes*, succeeded in acquiring, by private gift, immense quantities of land. In particular, the Church was clearly responsible, if not for the invention, at least for the rapid development of the practice of leaving lands by *will*, a practice which probably did more than anything else to break up the old kinship principles on which the village system was largely based. Finally, the State put the finishing touch on the legal dissolution of the village by sanctioning the taking of a *debtor's* land in satisfaction of his debts. This was not, perhaps, such a violent disregard of patriarchal principles as might at first sight appear. By these principles, as we have seen (p. 42), a man's kindred were responsible for his misdeeds, and, in the times with which we are now speaking, *debts* were usually the result of failure to pay the *blood-fine*. But the old rule was that the debtor paid with his *body;* his land never left the clan. In reversing this order of ideas, in giving the creditor a remedy against the debtor's land, the State was dealing a final blow at the communal character of the village.

(*b*) **Enclosure.**—The physical side of the dissolution took the form of the *enclosure* of the *open fields*. So long as the lands of the villagers lay in scattered strips in the *open fields* (p. 51), so long was there, at least in appearance, and, to some extent, in practical working, a *community*. Redistribution of the lands might have long ceased, but independent farming was still impossible. A man whose land consisted of fifty or sixty little strips lying mixed among his neighbour's strips, "hide-meal and acre-meal," could

not try experiments, could not use his own discretion. He had to follow the course of husbandry sanctioned by the *village custom.* But, towards the end of the Middle Ages, there arose all over Europe a controversy, sometimes picturesquely carried on in verse, between what was called in England "champaign" and "several" farming. The former was the old-fashioned method of working in great open fields (*campi*), the latter the modern system of cultivating in small compact fields *enclosed* by hedges. Of course the advocates of the new plan had little difficulty in proving its superior efficiency. It protected the diligent farmer against the wastrel who let his patches grow thistles; it enabled the enterprising man to try experiments; it especially allowed him to keep *sheep* instead of growing corn; it thereby enabled him to economize in *labour* (which was then scarce), for sheep-farming employs less hands than agriculture. Of course the reformers got their way, and, for a wonder, the reform brought artistic value with it, for it gave us, in England at least, the exquisite hedgerows which are the glory of the countryside. Instead of a bundle of scattered strips, the farmer received a more or less compact block of the same extent, which he could deal with as he liked.* But the change was the end, or almost the end, of the *village community;* and it gave us property in land of the most private kind. For the scattered villagers, unless (as very rarely happened) they succeeded in throwing off lordship as well as village ties, found themselves, after the operation, isolated *tenants* of a great landowner, with whom alone they had in future to deal, instead of members of a village group, subject indeed to the claims of *lordship*, but strong in mutual protection. The wealthier of them

* The difference between land held on the old "open-field" system, and the same land after an "enclosure" will be graphically realized by a comparison of Plates A and B appended to this book. It will be noticed that in Plate A the process of enclosure has only begun; in Plate B it has been completed.

signified their new attitude by moving away from the village proper and building themselves new houses in the centres of their new farms. The village became, more and more, merely the abode of the cottagers; the old yeoman houses fell into ruins, or were divided up into tenements; class separation became more marked; the labourers became more and more *wage-earners*, and less and less villagers having an interest in the *land*. Only the *waste* or *common* still survived, to mark the ancient character of the village. In later times that has also in many cases been broken up; and the village has become the ideal of the individualist, a place in which every man "does what he wills with his own."

This has been a long story, and a difficult story to tell; but no one who has endeavoured to study for himself the history of the institution of *property* will ever pretend that it is an easy task to relate it. Two points have, however, it is hoped, been made clear. One is that the institution of *property*, as we have it now, is no sudden invention, which can be explained in an epigrammatic phrase by a platform orator. It is, on the contrary, the outcome of a long chain of historical causes, each contributing its quoto to the complex result. To the elements, previously enumerated (p. 102), of *user*, *production*, *seizure*, *exchange*, we must now add the elements of *lordship*, *revenue*, and *economic progress*, all of which have some share in erecting the institution of *property*. The other point is, that while physical, or, as we may perhaps call them, *natural* causes contributed greatly to this result, the most powerful factor has been the development of that particular form of association which we term the *State*.

CHAPTER XI

The State and Justice

We are so accustomed to look upon the *administration of justice* as an inevitable duty of the State, that it requires an effort to realize that this state of things also, like the rest of our modern social organization, is the result of *historical growth*. Now-a-days, all justice is (broadly speaking) administered in England in the name of the *Queen*, that is, of the *Head of the State*. But it was not always so.

Old ideas of justice.—As we have already seen (p. 42), the first notion of justice was that it consisted of *revenge* or *retaliation*. The *blood-feud* was the earliest type of judicial machinery, at least so far as private offences were concerned. For offences so gross that they outraged the moral sense of the community, there remained the drastic remedy of expulsion from the community, by the community itself.

We have also seen (p. 42) that the first step towards a milder state of things was the substitution of the *blood-fine* or *money-payment* for the exercise of *revenge*. The earliest offences were nearly all offences of *violence;* therefore the remedy of revenge was obvious and natural. When the development of the notion of *property* made *theft* a prominent offence, *restitution* was naturally suggested; and this fact, together with a perception of the evils of *revenge*, may have led to a general acceptance of the *money-payment* system. As we have before said, early codes of law are often mainly composed of elaborate tables of *fines* to be exacted for particular offences.

Absence of authoritative tribunals.—But it is to be observed that, in patriarchal society, there never seems to have been any authority capable of *enforcing* the money-payment system. It was a *voluntary* system. The elders of the tribe or clan seem to have acted as a persuasive body, urging the parties to receive and pay respectively the sum which they (the elders) declared to be the proper fine for the offence. But if their persuasions failed, the parties were entitled to resort to the *feud*. Imagine a modern judge "persuading" Mr. William Sikes to "make it up" with the relatives of his victim, and, on his remaining obdurate, leaving the two families to fight the matter out. Yet this course, quaint as it seems to us, is quite in accord with the ideas of patriarchal justice.

Not applicable to public offences.—And it is also to be observed that the system of *fines* did not touch *public offences*. They were significantly described by the Teutonic tribes as *bootless wrongs*, i. e., wrongs for which no *bot* or payment could atone. When they were perpetrated, the tribe or clan arose in its wrath, raised the *hue and cry*, and expelled the offender from its midst. This distinction is of vital importance; it was the germ of the modern distinction between the *crime* which is prosecuted by the State, and the *civil wrong* which is left to be brought before the Courts by the injured party.

Survivals of the notion of revenge.—The fundamental notion that a private wrong gave rise to a lawful exercise of *revenge*, unless the parties could be persuaded to "swear the peace," lingered to the very end of patriarchal times, and even passed over into political society. One of its most curious manifestations was the right of *reprisal* practiced by merchants till quite the end of the Middle Ages. If an Antwerp merchant, for example, did not pay a debt which he owed to a Bristol merchant, the Bristol merchant's *gild* seized the goods of any other Antwerp merchant who was unlucky enough to be in Bristol at the time. And in

feudal jurisdictions the *trial by battle*, which is, of course, only a modified form of the *blood-feud*, lingered until feudal jurisdictions were themselves swept away.

Action of the State.—But in the matter of *bootless crimes*, the State very early began to make itself felt. It is very probable that the old *communal* remedy was not rigorously enforced. What is every one's business is no one's business; and so, no doubt, many a heinous offender escaped. But, even if it was enforced, the result would not be satisfactory to the State. The State did not want to lose its men, even if they were criminals. They might have been very good soldiers, for all that they were violent members of society. And so we find the practice growing up of the State "redeeming the offender from the forest," as the Swedish laws put it, i. e., of letting him return from banishment or submitting to a *penalty* or *punishment*. The *hue and cry* was raised at the instance of the State's official; but the offender, when caught, was punished and allowed to return. This practice developed ultimately into the process known as *outlawry* in the Middle Ages, and became exceedingly popular with the State; because by a train of reasoning which it is easy to follow, the outlaw's goods were *forfeited* to the king.

The King's peace.—But the royal justice received a great impetus from the development of another idea, the idea of the *King's peace*. It was quite natural that a military ruler should sternly resent anything like *disorder* or *violence*. Hence the State soon lays down the doctrine that all offences of violence are offences against the State—"against the peace of our Sovereign Lady the Queen," as a modern indictment puts it. And a man who offends against the State must expect punishment. In connection with this idea comes in the institution of *sanctuary*, so important a modifier of violence in primitive society. A man has, perhaps accidentally, caused the death of another. Fearing the vengeance of the dead man's kindred, he flies

to the nearest place of *refuge*, and claims the protection of its master. The process is exactly described in the Mosaic books of the Old Testament,* and is immensely important in introducing the distinction between *intentional* and *accidental* violence. In the case of the Jews, the sanctuary was placed in charge of the *Church* (the Levites); and in medieval history the Church's *peace* also played a great part in the suppression of the *blood-feud*. But, in the end, the *King's peace* became the most important, because it was the most powerful. An amusing modern form of the idea has manifested itself in Persia, where the introduction of the telegraph has enabled a suppliant to appeal to the Shah for sanctuary from a great distance. Every one has a right to approach the Shah by telegram if he prepays a reply. The man who apprehends violence goes to the telegraph office, dispatches his appeal, and sits down to await the answer. As things in Persia move with deliberation, this is probably several days in arriving. But as the telegraph office is the Shah's property, it is *sanctuary;* and the suppliant, so long as he remains there, is safe. It is no uncommon thing, therefore, to see a little group of suppliants, fortified with food and drink by their relatives, crouching in the telegraph office, while a corresponding group of *avengers of blood* waits eagerly outside.

Extension of the King's peace.—But it is quite easy, by a little clever elaboration of the idea of the *King's peace*, to make it cover a whole multitude of offences which are not really crimes of violence at all. Take, for instance, the offence of *theft*, which is not usually accompanied by violence, and was originally, and in its nature, a private offence against individuals. But the State says that a theft, successful or unsuccessful, is apt to lead to reprisals, and reprisals mean *violence*, and therefore theft is an offence

* Numbers xxxv. 6-33; Deut. xix.; Joshua xx.

against the *King's peace*. After the king has been satisfied, the injured party or his relatives may claim compensation; but it is generally found that, after the king has been satisfied, there is not much left for any one else. And so *theft* and such like offences become purely matters of *criminal* or *public law*.

Treason.—Thirdly, the State, as a military institution, is peculiarly concerned with the *allegiance* of its subjects. Anything that can be considered as a betrayal or defiance of allegiance is a direct attack upon its security, and is directly visited by it with punishment. Thus arises the law of *treason*. And if we put together offences of peculiar enormity, offences against the peace and treason, we get the bulk of *criminal law*, at least in early times. That is to say, we get the bulk of that law which the State itself enforces, as opposed to that law which is enforced by private individuals.

The State and private offences.—The appearance of the State in *private lawsuits* is much later, and we find an important intermediate stage between the moot of the elders, with its merely persuasive power, and the tribunal of the State itself. This was the court of the *feudal lord*. Partly, no doubt, this result was due to the action of the State in entrusting the maintenance of order in the local districts to its representatives; still more, perhaps, it was due to the State's representative stepping into the shoes of the old tribal or clan chief, who, of course, presided over the moot of the elders. The result of the combination was a very tenacious and powerful jurisdiction, which ultimately became a serious rival to the State. On the one hand, it was *military* in character; for its president was really the State's representative, and was endowed with a certain amount of military force. Hence it was comparatively easy for him to stamp out the *blood-feud*, and to compel the parties to it to bring their quarrels before him. Then, after due inquiry, and if compromise was impossible, it could be settled by a

final and conclusive *combat* or *battle*, fought under strict conditions. On the other hand, it was *patriarchal* also; for it followed the lines of the old patriarchal settlements, and it comprised (at least in cases where freemen were interested) the *homage* of the *fief*, whom we may strongly suspect to have been largely identical with the elders of the clan. A curious popular mistake has arisen on this point, in connection with the expression, "trial by one's peers." This is usually taken to mean "trial by jury." As a matter of fact, it was a phrase used to express abhorrence of trial by jury, which, at the time when it became prominent, was a very unpopular innovation, introduced by the royal officials. "Trial by peers" really means "trial by the men of one's fief;" and it was a cry of feudalism against the new royal justice. Feudal jurisdiction in private lawsuits for a while reigned, in fact, supreme; and, even in criminal matters, it succeeded in acquiring some part of the royal jurisdiction. But the kings held on very tight to criminal justice, and preferred to do their local work in such matters by means of subordinate agents, such as the *sheriffs*, who also gradually took away from the feudal lords much of their jurisdiction in military and revenue matters. Ultimately they also became too powerful, and were superseded by the *itinerant judges* (for judicial matters), by Exchequer officials (for revenue), and by royal lieutenants or governors (for military affairs). At least this was so where the State succeeded in stamping out *feudalism*.

Struggle between the State and feudalism.—For it is one of the ironies of history that the State has, in almost all progressive countries, been obliged to enter into a death struggle with a system which it has itself been the main instrument in creating. In some cases it has been successful, in other cases it has succumbed in the task; but in all cases the struggle has been severe. There were two main objections to *feudalism* from a political aspect.

The first of these was its *disintegrating* character. Let

to itself, feudalism would have split the State in pieces. In fact it did so in some cases, notably in the case of the medieval German Empire, where the great fiefs ultimately became independent States. The reason is not very far to seek. The inhabitants of a feudal district became so accustomed to look upon their *lord* as their earthly providence that they lost sight of the power above him. They assembled under his banner, paid their taxes to him, and were judged in his Courts; they hardly recognized the existence of the *State* at all. Consequently, if a quarrel arose between their *lord* and the *king*, they were quite as likely to support the former as the latter. It was one of the great secrets of the stability of the English throne in the Middle Ages, that the kings very early and very skilfully, the circumstances favouring them, put an end to this kind of thing. They insisted that all military service should be rendered to themselves, and themselves only. They established a new system of taxation which, while it relieved the feudal lords of a great deal of financial responsibility, deprived them of their former position of tax-gatherers. And, finally (and this is the line we have now to follow), they took away from them the *administration of justice*.

In this they were greatly helped by the second objection to feudalism; viz., its *hereditary character*. The right to hold a feudal court came to be looked upon as a piece of *property*, valuable because it yielded a substantial income. When we notice the eagerness of the State to get hold of the administration of justice, we must not suppose that it was entirely, or even principally, because of the desire to supply pure justice to the people. It was mainly due to a desire to secure the *profits* of jurisdiction. In early times, presidents, judges and officials, as well as advocates and pleaders, were paid by *fees*, often, it is to be feared, by *bribes*. The more business, the more fees. Hence the desire to enlarge jurisdiction. Possibly this competition for the supply of justice would be a good thing if all liti-

gants honestly desired the best tribunals. Unfortunately there are always dishonest litigants, who are only too glad to resort to corrupt, ignorant and dilatory tribunals. Still, as a matter of fact, we are bound to admit that the State Justice has, in the end, succeeded in superseding Clan Justice, Feudal Justice, Merchant's Justice, and even Ecclesiastical Justice, because on the whole it has proved itself better than any other. Its superiority has consisted chiefly in three qualities.

1. **Strength.**—We have seen that the oldest type of law court, the *moot* of the elders, was a voluntary tribunal. If the accused party did not choose to attend the summons of his opponent, or to obey the *doom* of the court, the court could not compel him. It had no *executive* machinery. Now a voluntary tribunal may be all very well when both parties to a quarrel are perfectly *bonâ fide*, and honestly wish to obtain a fair decision. But, in nine cases out of ten, one party is not *bonâ fide*. He wants to gain time by delay, or fraud, or obstinacy. A voluntary tribunal can do nothing with him. But the royal officials would not stand any nonsense. If a litigant would not obey their summons, his goods, and even his land were seized, and, in the last resort, he was put in prison against the day of trial. So likewise with the judgment. If the litigant refused to obey, the judgment was enforced against his property and his person. Of course the feudal tribunals had also, to a limited extent, this coercive power; but it was the absence of it which really proved the undoing of the tribunals of the clan, the gild and the Church.

2. **Skill.**—Again the royal officials, chosen from a wider field and selected exclusively for ability, naturally attained a much higher level of judicial skill than the elders of the moot, chosen mainly for their age, the feudal noble who had inherited his position, or the ecclesiastic chosen for his piety. No doubt the feudal baron and the ecclesiastic had also their officials; they did not always decide cases in person. But

it is very unlikely that these were as skilful as the king's officials. Roughly speaking, the biggest employer gets the best servants; and the king was by far the biggest employer of labour in judicial matters. There were many feudal barons and many bishops and archdeacons; but there was only one king. One very striking evidence of the superiority of the royal over the feudal and popular courts in the matter of official skill is the fact that, until comparatively late in history, the royal courts alone kept *records* of their proceedings in writing.

3. **Simplicity.**—One of the most erroneous notions about primitive judicial procedure is that it is *simple* and *straightforward.* When it is actually examined, it is found to be full of traps and pitfalls. The parties must use exactly the prescribed *forms of words;* a slip or stammer will prove fatal. This is extremely natural when we remember that the oldest form of judicial procedure is a substitute for a *fight*, and that, in a fight, the object of each man is to catch his opponent tripping. Moreover, the parties must only proceed upon the correct days, or the whole proceedings will be worthless. The story of the Roman augurs, who succeeded in keeping secret the whole of the legal forms and the lists of correct Court days, so that no one dare go to law without consulting them, is thoroughly characteristic of primitive procedure. It is, as the Germans say, emphatically *mit Gefahr* ("with risk"). But the royal officials, though they were not free from official pedantry, swept away much of the ancient *Abracadabra* of legal procedure. They announced openly the days on which they would hold courts, and, upon reasonable payment, issued correct forms.

Still more did they improve and simplify the actual method of *trial.* Broadly speaking, after the blood-feud had died out, or had subsided into the *trial by combat*, the ancient tribunals knew only two other methods of trial. If the accused was respectable, he was allowed to clear himself by his own *oath*, and that of a prescribed number of his *rela-*

tives, who now swore for him instead of fighting with him. If he was a serf, or a man who bore a bad reputation, he was compelled to submit to the *ordeal*, e. g., to plunge his arm into boiling water, to walk blindfolded over red-hot ploughshares, or to lift a mass of red-hot iron. If he was injured in the process, he was held guilty; if he escaped, he was pronounced innocent. As has been well remarked, it is difficult to see how a man could have been convicted by the *oath* (unless his kinsmen made a slip in the form), or have been acquitted by the *ordeal* (unless the officials were bribed). In any case, the whole trial was, as we should think, a mere farce.

The royal officials introduced greatly improved methods. Without entirely discarding the *trial by combat*, they offered attractive alternatives. For example, they allowed proof of the complainant's accusation or the defendant's denial by *record*, i. e., by appeal to the written files of the Court itself, or to solemn documents. By this means they indirectly did much to encourage the use of writing in daily transactions. Again, they insisted that certain transactions should be conducted before *witnesses;* and then the witnesses could, of course, be produced in Court to settle disputes. But their most famous innovation was the *trial by jury*, or trial concluded by the answer given by a small body of neighbors, to a question put to them by a royal official. This famous institution, about which much nonsense has been talked, seems to have been originally a *royal privilege*, inherited by the Emperor Charles the Great from the decaying Roman Empire, and spread by his officials throughout western Europe. If the Emperor suspected that any of the Imperial rights in any district had been misappropriated, his officials could *compel* the neighbors to attend and answer on oath any questions put to them concerning it. Needless to say, it was at first an intensely unpopular institution, both with the men who, as we should say, "sat on the jury," and the people whose misdoings were thus revealed. But it suited

mirably the purpose of the State, and was taken up by king after king in western Europe. In return for a substantial payment, the kings sold to private litigants the privilege of using it; but, of course, it could only be used under the presidency of a royal official, for the jury would not obey the summons of any one else. After it had been in use some years for royal business, e. g., revenue matters and criminal prosecutions, honest litigants began to see the advantage of it, and to employ it extensively. But its originally limited character is shown by the fact that, in criminal cases, it was long before the prisoner could be *compelled* to submit to a trial by jury; and the earliest criminal jury was one of accusation only (*grand jury*), not of trial. Gradually, however, as people began to see that *trial by jury* was a preferable alternative to being smuggled out of the way by the royal officials, or being left to languish in prison, or taking their chance amid the pitfalls of feudal procedure or in the *judicial combat*, trial by jury became "popular" in the modern sense, and was regarded as a *bulwark of liberty*. Unfortunately, in many countries it died out altogether, just because at the critical moment the State (i. e., the king) was too weak to urge its adoption. So it has come to be regarded as a peculiarly English institution. But it was not so originally.

By these means the State succeeded in most progressive countries in getting into its own hands the business of administering justice. We may date this achievement, roughly speaking, by the *Reformation*, when the struggle with the Church got rid, even in Catholic countries, of the last formidable rival to the State jurisdiction. In some cases the State abolished the local courts altogether and set up new ones of its own. This was what happened in France, and it led to consequences which were disastrous, but which are too technical to explain here. In other cases, notably in England, the State pursued the much easier plan of converting the local tribunals into tribunals of its own, thus, to

a great extent, preserving that *continuity* which is so important a factor in political progress.

We have now to answer the important question, What was the *law* administered by these various tribunals? But this question must be reserved for a separate chapter. It involves a treatment of the important subject of *political representation.*

CHAPTER XII

The State and Legislation

As we have before stated (p. 41), the notion that law could be *made* was unknown to primitive society. The rudimentary idea of law, as it presented itself to people in the patriarchal stage, was that of a *custom* or *observance*, sanctioned by the approval and practice of *ancestors*. At first this idea, like everything else in patriarchal society, was purely *personal;* a man's *custom* or *law* was the custom of his tribe or clan. Comparatively late in European history, the rule was gravely admitted that each man was entitled to be judged by the law of his *race* or *folk*, no matter where he might be. There is even a faint survival of the notion in civilized countries at the present day. That most persistent of all patriarchal societies, the Jewish, retains to a certain extent its *tribal law* in the Gentile cities of the West.

But, for the most part, the development of *agriculture*, aided by the later development of *feudalism*, made law a *local* rather than a *personal* thing. Instead of the *custom of the clan*, people began to speak and think of the *custom of the village*, the *custom of the fief*, and the *custom of the town*. The personal idea still lingered; there was a strong feeling that no one could claim the custom of the village but a villager, of the fief but a vassal, of the town but a burgher. But this element gradually dwindled, as residence took the place of blood in the organization of society.

It is necessary, however, most carefully to remember that, when we speak of law being *local*, we do not mean that the same law applied to *large areas*. If, for example, we were to speak of the *law of France*, or the *Law of Germany*, in connection with the tenth century, we should betray great historical ignorance. In the tenth century, every little district, almost every village and town, in France, Germany, Spain, and even in England, had its own *special* law. In England, for reasons which we are about to point out, this state of things was modified very early; yet, even in modern England, at this very day, as all lawyers know, there are hundreds of different *village laws*, or rather *manorial, laws*, which, under the name of *copyhold customs*, regulate important questions of property. And in France, Germany, Spain and other countries, there was no *national law* till the end of the last century.

Three great agencies gradually swept away this (as we should think) intolerable state of affairs, and created the modern system of law and of legislation.

1. **Records.**—From the early Middle Ages, and from all parts of Europe, there survive to us a deeply interesting body or collection of *codes*, *folk-laws* as they are called, or *Leges Barbarorum*. We have them for the Teutonic kingdoms of Italy and Spain, for Bavaria, Saxony, Burgundy, Frankland, Swabia, Frisia, England, Wales, Ireland, even (to a slight extent) for Scotland, Denmark, Sweden and Norway, and many other districts. Though their actual dates differ very widely, they nearly all come from the same *relative* period in the history of each country; viz., the period at which the tribal settlement is first becoming a fixed *kingdom*, under a conquering king. That is to say, they come from the very earliest days of the *State*. They are due, almost universally, to one and the same cause; viz, the desire of the conqueror to know the *customs* of his conquered subjects. In many cases he has formally promised to respect these customs; in no case does he pr-

pose to sweep them away. But he must know what they are; he cannot respect what he does not know.

And so we see that the so-called Barbarian Codes are not *legislation*, in the sense of *law-making;* but *statements* or *declarations* of custom. In nearly all cases, they are drawn up as the result of a formal and careful inquiry amongst those *chiefs* and *elders* who are supposed specially to know the customs of their people.

Importance of the step.—Nevertheless, the drawing up of these customs was a momentous event in the history of *Law*. As we have seen (p. 41), unwritten custom *does* alter; but it alters itself *automatically* and *imperceptibly*. No one is sacrilegious enough to propose deliberately to alter it. But *written* custom cannot be altered *imperceptibly;* it is always possible to point to the exact text, and show what it says. Nevertheless customs *must* alter in a progressive society; and so it was necessary to have successive *editions* of the written Codes, as in fact happened. Thus people came gradually to accept the idea that custom could be *altered;* and occasionally they even allowed the king, by way of bargain or agreement, to introduce certain deliberate alterations. No doubt a good many more alterations were secretly slipped in by the royal scribes who drew up the Codes. We must remember the enormous respect paid in primitive times to the newly discovered art of *writing;* a written document was looked upon as a sort of *charm* or *magic power*. To say of a rule—"it is written," was to claim for it almost a sacred character. We have all heard of the Hindu who carried a doctor's prescription about on his person, instead of taking it to the apothecary to be made up. That is characteristic of the veneration with which primitive people regard written documents. And so we may very well suppose that, if a passage was found in a written code, no inquiry would be permitted as to how it got there.

2. **Law Courts.**—We have seen, in the preceding chapter, how the State gradually acquired the business of

administering *justice*. And, in the main, the royal officials, in performing this business, honestly tried to decide cases according to the *custom* of the place in which they happened to be. But they naturally became confused and impatient with the innumerable petty differences of local custom, and leaned, perhaps unconsciously, in favour of *uniformity*. Especially was this the case with the *itinerant* or *circuit* judges, to whom allusion has been made (p. 117). Being attached to no particular locality, they were free from local prejudice; and, as they gathered round the royal chair at the end of their journeys, they probably discussed with one another the difficulties of their task, and came to some agreement on general principles. What they probably did was to take some *general rule*, which represented the average practice of the local communities, and agree to ignore local differences as much as possible. In this way, at any rate, the English *common law* seems to have been modelled; it was the law which was *common* to all the districts of the kingdom. Where a local custom was very tenacious, it was allowed to prevail in its particular district. And it is very significant that *copyhold customs* (p. 125) were not harmonized, *because the royal judges did not decide copyhold cases* till quite late in history. And the reason why, on the Continent, there was no *common law* for centuries later than in England, was just because, on the Continent, the State did not get hold of the *administration of justice* till centuries after it had done so in England. But, to show that the process was not peculiar to England, we may point out that the same result had occurred at a similar stage of Roman history; where the customs selected and harmonized by the *prætors* had become the *common law* of the mighty Roman Empire. It may be remarked, as a matter of detail, that one of the shrewdest moves by which the English judges pushed their plan of making a *common law* was by limiting the verdict of the jury in every case to *questions of fact*. At first the jury used to give answers both on *law* and *fact*

and, being a purely local body, they used, of course, to follow local *custom*. For example, they would be asked: "Who is the heir of A?"; and if they came from a district in which the youngest son succeeded to his father, they would say, "X" (A's youngest son). But later, the judges used to ask them, "Who is A's eldest son?"; which is purely a question of fact. And then the judges used to declare that the eldest son was the heir. Thus, incidentally, we get the famous division between the province of the judge and the province of the jury.

3. **Fictions.** — But these two methods, valuable as they were in gradually preparing the public mind for the business of *law-making*, were slow and imperfect processes. So also was another very useful makeshift; viz., the use of *fictions*. If, for example, a rule of custom said that land could not be sold, and A wished to sell his land to B, B used to bring a lawsuit against A, pretending that the land was really *his* (B's), and that A was keeping him out of it. Acting in collusion, A would make no defence; and the Court would therefore adjudge that the land *belonged* to B. The fiction there was that there had been no *sale*, but a correction of a former mistake. Of course, that is a glaring *fiction;* and it could never succeed but for the willingness of the Courts to connive at a change. But it is a well-known fact that people will accept a change under cover of a *fiction*, which they would spend the last drop of their blood in resisting as an avowed alteration. Turkey will not give up her sovereignty over Crete; but, if the Turkish flag may fly in Crete as a symbol of Turkish sovereignty, Turkey will withdraw all real control.

4. **Legislation.** — But, where progress and development are rapid, new custom is, in fact, being rapidly made every day, and all these makeshifts are inadequate to the task of declaring it. Some more direct and speedy method must be adopted. The answer to the difficulty is found in *political representation*.

To modern politicians, *political representation* is a form of *agency*, a means by which people express their wishes, and *elect* people to carry them out. About the precise character of the process there are, no doubt, great differences of opinion. One school of politics holds, for example, that the representatives are mere *delegates* of the electors, morally, if not legally bound to obey their *mandate*. Another school takes the view that the elector, in choosing his representative, puts himself entirely in the latter's hands, and leaves him to act as he thinks best. Both agree, however, in regarding an election as an opportunity for the elector to express his choice of a *representative*.

But any one who is at all familiar with primitive society is aware that the idea of *agency* was quite unknown to that stage of history. In primitive society every transaction was apt to end in a fight; and it was important, therefore, we might even say necessary, that it should be conducted by the parties actually concerned. We must look elsewhere for the beginning of *political representation*.

Let us take a totally different line. Primitive society knew nothing of *agency;* but it knew a great deal of *joint liability*. A murdered B; not only A, but A's relatives were liable to the relatives of B. A (a mason) built B's house so badly that it fell down; not only A, but A's gild was liable to B. A (a merchant) incurred a debt to B. Not only A, but (as we have seen) A's town, was liable to B.

The State uses the idea.—When the State was established, it made abundant use of this idea. A man was found dead on the king's highway; the three neighbouring villages had to produce the murderer, or pay the murder-fine. There had been a cattle raid; and the tracks of the stolen beasts led to a certain village. That village must have produced the thief or paid the fine. There had been a row in a market-place, and the king's flag had been torn down, or his bailiff insulted. The town had to mal

amends. Or the king had levied a tax; and the hundred or the town had been assessed at so much. It had to pay.

Enforcement of joint liability.—But what if it could not or would not pay? According to our modern ideas, the liability ought to have been divided proportionately or equally amongst the individual members of the village, or town, or hundred; and each man ought to have been compelled to pay his own share. But this course would have involved endless trouble; and the king had other things to do. He knew a simpler and more effectual way. He sent his officer, who seized a couple of the wealthiest and most respected inhabitants of the village, or hundred, or town, and clapped them in gaol till the money was paid. The village, no doubt, protested. Very well, let it find the money, and the men would be restored. Brutal, perhaps, but effective. It is done every day in Oriental countries. The result is that the captives are ransomed by their relations and friends, who, by some means or another, have managed to scrape together the money. Incidentally, we may notice that this matter of raising the money does a great deal towards building up what we may call *local self-government*, in the district affected. But here our chief object is to notice its importance as a step in the growth of *political representation*.

Development of the idea.—For we may be very sure that a practice so convenient to the State grew and spread. The State was always wanting money from its subjects on some pretext or another. And so we are not at all surprised to find that, quite early in the Middle Ages, and all over Europe, the village headman and elders got into the habit of assembling at the hundred-moot and the county-moot at fixed times in the year, to meet the royal officers, the sheriff or his "junior," and to answer the royal demands. Later on, as towns appeared, we find their headmen and elders doing the like. No doubt on these occa-

sions a good deal of purely local business was discussed; but we may be very sure that the real thing which kept the practice alive was the presence of the royal officers. Over and over again we find the royal command issued: "Let the shire-moot and the hundred-moot be held as it was aforetime, and let the reeve and four men come," and so on.

Appearance of Parliament.—Then, somewhere about the end of the twelfth century, a great idea was born in western Europe. Commerce was progressing rapidly; the value of money was falling. In every country the State was wanting more money. Why not have a great *national moot*, as well as many little hundred-moots and shire-moots? And so, all over Europe, in Spain, Sicily, France, Germany, Scandinavia, England, Scotland, even Ireland, *Parliaments* sprang up. But they were not entirely *representative*, still less were they *homogeneous*.

The Nobles.—For, if we turn our thoughts back to the earliest days of the State (Chapter IX), we shall remember that its first organization contained a *council* of king's followers, originally the comrades who had followed him in his conquest of the kingdom. This council had never died out, but had, on the contrary, been enlarged by the gradual creation of *nobles*, and by the admission of the great ecclesiastics, the bishops and abbots. In fact, so large had it become that, for ordinary purposes, it was too bulky, and the daily work of the State was done by a smaller body of officials, generally known as the *Curia* or *Court*, which was always about the person of the king. But, on solemn occasions, the Great Council of nobles was always summoned, though probably the humbler members did not often attend. So when the kings determined to hold *national moots*, they naturally summoned the members of their Great Councils.

The Clergy. — In the meantime, a new and very important class of persons had grown up; viz.,

cathedral and parochial clergy. They had amassed great wealth by the gifts of the pious; it was calculated that something like one-fifth of the land of Christendom was in the hands of the Church. Just at the time of which we are speaking (twelfth and thirteenth centuries) the Church had developed a policy of *isolation*. Under the guidance of a succession of able Popes, her clergy were withdrawing themselves from secular affairs and becoming a *caste* apart. They cut themselves off from domestic life by adopting the rule of celibacy; they refused to plead in the secular courts; above all, they declined to pay taxes to the State, on the ground that they paid them to the Pope. Now, as the main object of the kings in holding these *national moots* was to get money, it is quite obvious that they could not afford to let the Church escape. So they insisted on the representatives of the clergy—the deans, archdeacons and proctors, coming to Parliament. The clergy did not like it; but in most cases they had to come.

The smaller landowners.—Then the smaller landowners were represented. In England this was done fairly enough in one way, but not in another. The sheriff was told to send two people from the county court; but, instead of sending *villagers*, he was told to send *knights*, i. e., *landlords*. No doubt the villagers were pleased at the time; but it was a bad thing for them in the long run. In other countries the *villagers* were often represented by men of their own class.

The townsmen.—Finally, the sheriff was told to send people from the towns, *burgesses* or *burghers*, as they were called in England; and thus the medieval *Parliament* was complete. It represented the *estates* of the *realm*; viz., nobles, clergy, yeomen or peasants, and craftsmen.

But two things about it are well worth noticing.

(*a*) It was not, in any ordinary sense of the term, a *popular* institution. On the other hand, for many years after its appearance, it was intensely unpopular, both with

"constituencies" and representatives. The counties hated it, because they had to pay the wages of their members. The clergy hated it, because they did not want to acknowledge the secular authority. The boroughs hated it, because (in England at least) the parliamentary boroughs paid a higher scale of taxation than their humbler sisters. And all hated it, because a Parliament invariably meant *taxation.* The members themselves disliked the odium of consenting to taxes which their constituents would have to pay. Only by the most stringent pressure of the *Crown* were Parliaments maintained during the first century of their existence; and the best proof of this assertion lies in the fact that, in those countries in which the Crown was weak, Parliament ultimately ceased to assemble. The notion that Parliaments were the result of a spontaneous democratic movement can be held by no one who has studied, ever so slightly, the facts of history.

(*b*) Parliament, at any rate the *representative* part of it, was, in its origin, concerned solely with the granting of *money.* The nobles were, it is true, hereditary *councillors* of the Crown; but the clerical proctors, and the members for the counties and boroughs, could claim no such position. There was no pretence of such a thing in the early days of Parliament. It was *liability*, and not *privilege*, which was the basis of Parliamentary representation; it was the old idea of the seizure of the village elders, carried out on a magnificent scale.

New character of Parliament. — But it not unfrequently happens that an institution created for one purpose is found to serve quite another. If the representatives of shires and boroughs might not advise, at any rate they might *petition.* And petitions come with a strong force from people who are being asked to grant sums of money. As a matter of fact, the members, especially the members for the shires and boroughs, petitioned loudly and frequently; and sessions of Parliament very soon be-

to assume the character of bargainings, in which the king undertook to grant petitions in return for gifts of money.

But what has all this to do, it may be asked, with *legislation?* Just everything, as we shall now see.

Character of petitions.—For if any group of petitions presented by a Parliament be examined (in most cases they have been carefully recorded) we shall find that they fall readily into two divisions. One division consists of mere *private* requests, e. g., that a particular man may have a pension, that a particular oppression by a royal official may be abolished, and so on. These, if granted, only involve an executive or administrative act on the part of the Crown. But the other division consists of complaints of the breach of *good and ancient customs*, and a request for their confirmation. These, if granted, result in declarations, or, we may say if we like, makings of *law*, i. e., in *legislation.* It was already admitted that the Crown had *ordaining* power. The king, as military commander, could issue any orders which could fairly be deemed necessary for the performance of his universally recognized duties; viz., the defence of the country against foreign attack, and the maintenance of order within. He could order the ports to be closed, forbid the export of precious metals, direct the town watches to be kept and the militia to be maintained, and so on. He could, moreover, make all regulations for the control of his own officials, and for the conduct of proceedings in his own tribunals. All this was inherent in his *prerogative;* and, in a sense, it may be deemed *legislation.* But not until the royal *enactment* was combined with the popular *petition* was there real effective *legislation*, law-declaring which affected every hole and corner of a man's life, which turned the vague and badly-enforced *custom* into definite and strictly enforced *law.* And this, even at the present day, will be found to be the character of almost all successful legislation. It is *custom adopted and enforced by the State.* A wise

legislator never attempts to devise legislation out of his own head. Having made up his mind that a grievance requires remedying, he makes inquiries, and finds what the better and more enlightened people are *spontaneously* doing to remedy it. Then he endeavours to pass a statute compelling all people to act up to the standard of the more enlightened class. He does not take the exalted type as his model, knowing that it is useless to legislate "over the heads of the people." But he does take the "rather superior citizen," and he insists that the inferior people shall toe the line marked by him. At once the proposal receives support from the people who have already spontaneously adopted it. To the inevitable objection, that "it cannot be done," the answer is obvious,—"but it is already done." And thus the measure escapes the most damaging of all criticisms to a statesman, that it is "unpractical." There is a well known academic moot which inquires, "What are the proper limits of legislative interference?" Somewhere in the direction indicated will be found the practical answer to the problem. For a Government, still more for a private individual, to propose "fancy" legislation, is to proceed upon the entirely unwarranted assumption that the Government's servants, or the private individual, understand the business of the nation better than the nation itself understands it.

Majorities.—Reverting, in conclusion, to the subject of *political representation*, we may say something about a feature which has everywhere become identified with it, and without which political representation, as understood at the present day, could not be worked; viz., the doctrine of *majorities*. Strange as it may sound to modern ears, it is yet unquestionably true that there was once a time (not so very long ago) when the fact that a proposal was supported by a *majority* was considered no reason whatever for its acceptance.

This is the more curious, inasmuch as primitive soci-

was full of *communities*, i. e., groups of people having interests in common, and conducting their business in common. Surely, it will be said, these communities must have had some method of settling differences of opinion by votes? No. The answer is, that if custom did not settle the matter, or compromise, then the only remedy was a *fight*, in which the strongest party got its own way. Unanimity, or a fight, were the alternatives of primitive times. This is one of the chief reasons why primitive society was so almost stationary for centuries together.

Originally no competition for post of representative.—We cannot suppose that, in its origin as we have seen it, *political representation* found any urgent necessity for *contested elections*. There would hardly be much competition for the unpopular part of hostage, or even of member of an early Parliament. Apparently, at first, the royal officials laid hold of those whom they considered to be suitable persons, and packed them off to Parliament. In the boroughs, there are some traces of a *rotation* of service among the leading burgesses.*

But, as it began gradually to dawn upon people's minds that, in some countries at least, Parliament was a very powerful institution, and membership thereof a thing to be coveted, *contested elections* began to make their appearance. In England, by far the best example of early political representation, there are traces that, at the commencement of the fifteenth century (when Parliament was about two hundred years old), people were beginning to covet the position of member of the Commons House. The old idea of the unwilling hostage had died out. The new idea of *agency*, introduced, perhaps, from the Roman Law by means of the Church, was offering a more satisfactory explanation of the position of the parliamentary representative. He was the *agent* of his constituency, therefore his constituents had a

*This practice survived until quite late in the history of Spain.

right to *choose* him. But how if they disagreed? The question evidently caused great difficulties; and though, unhappily, as in so many really interesting matters of history, precise evidence is wanting, we can make a shrewd guess as to what happened.

Election fights. — Most people, probably, have noticed that the language of elections is somewhat bloodthirsty. We speak of the "party war-chest," the "election campaign," the "enemy's stronghold," "laying siege to a constituency," "leading troops to victory," "carrying the war into an opponent's territory," and so on. Much of this is no doubt, the decorative language of the New Journalism; but it is interesting to find that the further back we go in history, the more nearly does it tally with the actual facts. It is one of the numerous examples of the *survival*, in language, of practices which have passed away in reality. Most things in the Middle Ages ended in a fight. The contested election was no exception. The victorious party routed its opponents, drove them from the hustings, and *carried their man*, i. e., to the sheriff, who forthwith recorded his name, and sent it up to the Clerk of the Crown.

Fictions. — But fighting, though it has its charms, has also its drawbacks, especially when a royal official is standing by, who may inflict fines for breach of the peace. And so it would appear that a *fiction* was gradually adopted, by which it was *assumed* that there had been a fight, and that one party had gained the victory.

But which party? Well, other things being equal, in any fight the more *numerous party* will win. And so it seems to have gradually become the custom, where party feeling was not very strong, to settle the matter by *counting heads* instead of *breaking them*. Much of the machinery of voting recalls its origin. The first test is a shout. If one party greatly preponderates, its shouts will drown the other's, and there will be no need to go further. But the shout is t'

old *battle-cry*. If there is still doubt, the next step is *Divide*, i. e., draw up in *battle array*. We do not allow this in parliamentary *elections*, because the temptation to resort to the ancient method would be too great. But, in calmer assemblies, it is the regular procedure.

Parties. — Thus we see what a rough test the verdict of the *majority* is. It is not based, historically, on any ethical considerations. It makes no allowance for difference of merit in the combatants, or for generalship, both of which tell in real warfare. But it is a very simple and enormously useful practical way of settling disputes, and it has had a world-wide success. Curiously enough, it has often been reckoned the child of its own offspring. It is usually said that it is the logical result of the *equality of Man*. Historically speaking, the dogma of the *equality of Man* is the result of the adoption of the purely practical machinery of the *majority*. But the adoption of the majority principle is also responsible for another famous institution of modern politics — the *party system*. The *party system* is an elaborate piece of machinery, designed to secure that whenever an opportunity for a vote occurs there shall always be two opposing forces, at least, in existence to contest it. Its chief advantages are that it makes representative institutions something of a reality, by interesting a large number of people in politics, that it provides an effective criticism of the existing government, that it affords a scope for the energies and an outlet for the ambition of a large number of wealthy and educated men, and that it guarantees a certain consistency in policy.

These three institutions — *political representation, verdict of the majority*, and the *party system* — are the mainsprings of modern political machinery. They can be and are equally applied to *central* and to *local* government; and, by their adaptability to all kinds of purposes, they are rapidly becoming looked upon as *ends in themselves*, rather than as *machinery* for the achievement of ends. It is hardly neces-

sary to point out that the best machine in the world will not produce good results unless good material is put into it; and this historical account of the appearance of modern political institutions may possibly be of service in placing them in their true perspective.

CHAPTER XIII

The State and Administration

Difficulty of the subject. — We come now to the last, and by far the most difficult department of State activity. For whilst, in other departments, such as the dispensing of *Justice* and the making and enforcing of *Law*, the victory of the State has been complete, and, with rare exceptions, has become popular, this is by no means the case with regard to that wide department which we call *administration*. Very few persons now seriously argue that private law courts or private legislative bodies would be advantageous. But very many people do most strenuously argue that State interference with the *management* of domestic, religious and industrial affairs is thoroughly mischievous, and ought to be reduced to a minimum. In order, therefore, to avoid all appearance of dogmatism, this chapter will be confined, almost entirely, to a very brief sketch of the process by which the State has actually acquired its present administrative position.

Original character of the State. — Once more we must call to mind the initial fact that the State was, in its origin, a *military* organization. For many years after its establishment it consisted of a comparatively small body of warriors and officials, under the headship of a king, controlling by force a much larger mass of people who inhabited a definite territory. It was only by slow degrees, and as the result of various agencies, that the State incorporated into itself, mainly, as we have seen, by the process of

political representation, the people whom at one time it merely governed. For no one can be properly said to be a *member* of the State unless he has some voice in the direction of its policy.

Also, as we have seen, the State started upon its career with the primary function of maintaining external *peace* and internal *order*. Quite naturally, its first efforts in the direction of *administration* were intimately connected with this function. It had no decent pretence for interfering in the lives of its subjects, except with the object of performing it.

Means of communication.—To this fact we may undoubtedly attribute the early activity of the State in developing the *means of communication*. The "king's highway" is now regarded mainly as a convenience for public traffic; but, historically, it was laid down and maintained for the convenience of the *royal armies*. In the days in which commercial intercourse between one part of the kingdom and another was almost non-existent, the costly convenience of great trunk roads would certainly never have been undertaken as a commercial speculation. But roads were simply invaluable to a king who wished to move his army about; and they were always carefully maintained and protected by well-governed States. A similar care was bestowed upon the great *bridges*, which are, of course, merely highways across rivers. It is one of the strongest proofs of the reality of local government in England, that the care of the main roads and bridges is entrusted to local authorities. In almost all other countries the State jealously maintains its immediate control.

Posts.—The same ideas have been at work, though with a modified force, in the later developments of communication. The earliests *posts* were royal messengers; and although in England *railways** are not administered by the State, they

*Is not this largely because England is a naval rather than a military power?

frequently are so administered on the Continent; and there can be little doubt that motives of *military efficiency* largely influence their administration. Finally, it may be observed that land and ocean *telegraphic* connection is, in the majority of cases, intimately connected with State control.

Police.— On its internal side, the State's original function of maintaining *order* very early gave rise to a great development of what is generally known as *police* administration. Looked at from one point of view, this may be considered as a branch of the dispensation of *Justice*, which, as we have seen, ultimately became the exclusive function of the State. But, on its *preventive* side, police jurisdiction has a special character of its own, which distinguishes it from ordinary judicial work. In the *curfew** of William the Conqueror, in the enforcement of the *watch*, and the maintenance of the *tithings* or *peace-associations*, the State, in England at least, showed very early that it realized the importance of preventing as well as punishing disorder. The State regulation of *markets* and *fairs*, the many galling restrictions on the harbouring of *strangers*, and the stringent regulations on the subject of *inns*, were amongst the earliest developments of State police administration. On the Continent, as is well known, this preventive policy expanded to an enormous extent, and was made the excuse for all kinds of wanton State interference. In England it was wisely left, to a great extent, to *local* authorities; the work of the central government being mainly of a controlling or supervising character.

Revenue.— Next to the maintenance of *safety* and *order*, the State in early days was, as we have seen, mainly concerned with questions of *revenue*. To its desire to foster and develop this important interest we must undoubtedly attribute many activities of the early State, which, superficially examined, look like vague attempts at philanthropy, or

*The pious theory of our school histories, that King William laid down his curfew rule to prevent his subjects incurring the risk of fires, must be taken with a genial cynicism.

"State-socialism" in the modern sense. To this desire, for example, we may attribute many early ordinances on the subject of *weights* and *measures*, *prices*, *qualities*, and especially *coinage*. When the income of the State was paid in *kind*, it was extremely important that a *standard* of measure and value should be generally accepted. The royal officials found themselves hampered at every turn by the numberless petty local and customary differences on these subjects. And so, to render its accounts easier, the State insisted upon certain standards being adopted, and punished any attempt to revert to the old customary methods. When the revenue of the State came to be paid in *coin*, the necessity for uniformity was still more obvious. And so the State, not without some severe struggles, managed to acquire a *monopoly* of coinage. The great convenience to the *public* of the State's action in these matters is now universally recognized; but it was not the original motive of the State's policy.

Jealousy.—A third and very powerful motive for the active interference of the State in administrative matters was, undoubtedly, that *jealousy* of rivals which affects institutions no less than individuals. The State is, no doubt, an *institution*, but it is an institution composed of or at least worked by *human beings*. There is, therefore, nothing absurd in attributing to it human passions. We have already seen, in dealing with the development of *property* (Chapter X), how the action of the State led to the dissolution of the *village community*, on its proprietary side. On its personal side, as a group of dependents upon a lord, the State was powerfully helped by a great catastrophe which fell upon Europe in the fourteenth century. This was the *Plague*, or *Black Death*, as it is often called, which is calculated, in England alone, to have swept away from one-half to one-third of the population. The blow fell heaviest upon the labouring classes, and was followed immediately by a great *scarcity of labour*. This scarcity made itself felt principally in the agricultural districts, because the surviving agricultural labourers rushe

to fill the places of the dead craftsmen in the towns. So great was the despair of the land-owners that they appealed to the State for aid; and the State, not unwilling to intervene, issued stringent regulations, compelling all people of the labouring classes to work on the old terms. From that time the State has always been obliged to regard the *regulation of labour* as part of its functions. The immediate effect of the step was, virtually, to dissolve the old labour bond of serfdom, and substitute for it the regulation of labour by the State's officials. It is true that these latter were, in many cases, the old feudal lords in a new guise; and so serfdom was, in fact, a long time in dying out. And, of course, the interference of the State could not really affect the *economic* position of the labourer; that was, and is, always fixed by economic causes. But it altered his *legal* position.

The gild.—Precisely the same policy was adopted, somewhat later, with regard to urban labour. No doubt the *gilds* also suffered severely by the *Black Death*. But they had more vitality than the villages, and it seems to have been the great geographical discoveries of the fifteenth and sixteenth centuries which dealt them their death blow. In the wake of the great discoveries came great commercial ventures, quite beyond the power of the old gilds to manage. There sprang up a new class of merchants, who despised the petty restrictions and ambitions of the gild-system, so far as they hampered their own plans, though they were quite willing to accept similar privileges themselves for the new trading *companies* which they formed. Then, too, the old gilds were, as we have seen, a good deal mixed up with Roman Catholicism; and this fact, in Protestant countries, went greatly against them. Ultimately, the old gilds were dissolved by the State, which then found itself compelled to lay down certain rules for the control of artisan labour, and to enforce them by its own officials. In both cases we see the invariable policy of the State—to break down all intermediate authorities, and to deal directly with the individual,

One of the most striking examples of this policy has been, of course, the dissolution of the East India Company, which, so long as its trade monopoly lasted, was simply a gigantic *mercantile gild.* The same policy was manifest in the determined hostility displayed by the State towards the modern labour associations, known as *Trade Unions*, which date from about the end of the last century. And, had it not been for the strong reaction against State interference, brought about, not only in England but on the Continent, mainly by Adam Smith's "Wealth of Nations," it is not unlikely that the policy would have been once more carried out. As it is, the State is now very much inclined to wash its hands of a difficult problem by proclaiming its neutrality in industrial matters. But, unfortunately for itself, it has raised a spectre by its destruction of the old labour organizations; and it must face the consequences of its policy.

The Poor Law.—Incidentally, also, its action sowed the seed of the great problem of *pauperism*, or State relief of the indigent. The State, of course, did not create poverty; but, by its destruction of the chief agencies, the village system, the monasteries, and the gilds which dealt with it, the State practically assumed responsibility for its treatment. It is a responsibility which, by reason of its far-reaching consequences, the State has always been reluctant to undertake. In nearly all cases the actual administration of the Poor Law, where it exists at all, is placed by it in the hands of local authorities, the action of the central government being confined to supervision and criticism. This is, unquestionably, the wisest policy on many grounds; for Poor Relief is just one of those matters in which, if corruption and hypocrisy are not to be allowed to prevail, minute local knowledge is absolutely essential. The dangers which are attendant even on a local system of Poor Relief were, however, well illustrated by the appalling condition of affairs which prevailed in England during the half century which ended with the appearance of the Reformed Parliament of

1832. The great Poor Law Report of 1834 showed that, under cover of the Poor Law system, a scheme of *communism*, of the most degraded and vicious type, had practically established itself in the rural districts of England. It is very significant that, in newly-developed countries, such as the colonies of the British Empire, the State has, almost without exception, declined to undertake responsibility for the relief of poverty. And this is the more striking when we consider the political influence of the poorer classes in those countries, and their leanings towards "State-socialism."

Sudden calamity.—Once more it may be pointed out that the occurrence of any sudden and overwhelming *calamity* has always, at any rate since the great power of the State has been generally recognized, been followed by a great increase of administrative activity. It is, of course, perfectly natural that at such a crisis men's minds should turn instinctively for help to the most powerful agency with which they are familiar, regardless of ultimate consequences. And the more able and efficient the government of the State is, the more readily will its assistance be invoked. The story is the same, from the days of the Plague of the fourteenth century to those of the cholera in the nineteenth. A pestilence, a famine, a great fire, a murrain of beasts, a flood, a tempest; paralysis of private effort; application of State aid, followed by permanent organization of State machinery to deal with similar matters in the future. One of the best examples is, of course, the vast and complicated machinery of the Public Health department in England, which has rapidly grown up as the result of the cholera visitations in the middle of the present century.

New aspect of State administration.—It should, however, be pointed out that the question of State *administration* has received an altogether new character from the great modern development of *political representation*. When the State consisted entirely of a handful of officials and

privileged landowners, who had sprung from official ranks, an increase of its administrative activity really meant the extension of interference by this limited class with the daily lives of the vast masses of men whom it governed. Moreover, it was an interference which, however good its motives, almost inevitably suffered from want of detailed knowledge of the circumstances of those whom it was supposed to benefit. Now that the State includes within its ranks a very large proportion of the inhabitants of its territory, now that the average man can make his voice effectively heard by means of *elections* and *newspapers*, the danger of arbitrary and ignorant interference by the State is very greatly reduced. It is, no doubt, a reflection of this kind which has rendered the increase of State activity so popular, in communities in which the average man can make his power felt. In such communities it is, in fact, often said that the State is merely the nation organized for governmental purposes, and, therefore, that its action is harmless. Although this view is, no doubt, founded on an important truth, it contains by implication certain fallacies which, as a final word, it may be well to point out. It would be the worst kind of pedantry to attempt to lay down any hard and fast lines for the limits of State administration. But an honest recognition of the dangers attending it will serve as a useful guide to the citizen in making up his mind on any particular proposal.

Fallacies in the argument.— In the first place, even in modern conditions, the State and the nation never are *identical.* Even where the so-called "universal suffrage" prevails, the parliamentary franchise is not (with rare exceptions) exercised by women; and where, as in New Zealand, some women have the franchise, there are yet many inhabitants of the country who take no direct part in the business of government. It may be said, of course, that in such countries all persons have the franchise who are fit to use it; but tha is to beg a very large question. The fact remains that, even in the countries of so-called "universal suffrage," an exten-

sion of State administration means an increased interference by some persons with other persons' freedom of action. In countries, such as England and Italy, in which the parliamentary franchise is on a more restricted basis, the same truth applies with still greater force.

Again, even if we are to admit that State and nation are identical, we should still be very far from admitting that State interference, especially in *administrative* matters, is necessarily a good thing. *Legislation*, indeed, especially if it follows the policy of adopting and enforcing the practice of the most enlightened members of the community, stands on a somewhat different footing. For in ordinary legislation the citizen is merely given general directions, and left to follow them out at his own risk; whilst administrative activity not only gives him directions, but stands over him to see that he obeys them. In other words, legislation treats him as a *man*, administration, as a *child*. Yet, even in legislative matters, it might be well to allow the process of improvement to work by example, rather than by precept.

And, in *administration*, there can be little doubt that the constant supervision and guidance of the individual by the State tends to produce a somewhat feeble type of citizenship, which is constantly looking for directions, instead of casting about to help itself. This fact is very observable in the much-governed countries of continental Europe; but it is also noteworthy in some countries which should have inherited a healthier tradition of independence, such as the Australian colonies.

Finally, the modern indiscriminate advocacy of State *administration* conceals the fallacy that State officials must necessarily prove more *effective* in their action than private enterprise. In some respects, no doubt, there is ground for this view. The private individual naturally shrinks from rebuking practices which he knows to be harmful to the community, even when they are contrary to express law. In well governed communities, the public official has, of course,

no such scruples. Moreover, in its higher ranks, the body of State servants usually contains a majority of men of genuine public spirit of great ability, and of special training. The dignity of their position is sufficient to compensate them for the loss of that stimulus which, to human nature as we know it, is usually best supplied by the hope of personal profit, to be derived from hard work and ability. But, in the lower ranks of the State service, the force of these considerations diminishes rapidly, especially if the area of the State's operations be very large. The State has to compete with private employers of labour, who can, perhaps, afford to offer more tempting rewards. The State has not the same apparent interest in detecting laziness and inefficiency as the private employer; nor has it, as a rule, the same facilities. It is bound to move according to established routine; it is often tempted to stifle inquiries for the sake of avoiding scandals; it is peculiarly subject to pressure by outside influences. The head of an administrative department is often obliged to allow, among his subordinates, conduct which he would not for one moment tolerate in the management of his own estate or his own business. Add to this the unpleasant fact that the State, for various reasons, cannot, in many cases, even promise security of tenure to its minor officials; and it becomes obvious that the attractions of the State service to a really desirable class of men are very small. The result is that minor State officials are, in too many cases (though there are numerous honourable exceptions), lazy, stupid, or corrupt, and, therefore, *inefficient*. In other words, plans for the unlimited extension of State administration stand between the horns of an awkard dilemma. It will not be safe to carry them out until the progress of education and morality has produced an unlimited supply of men and women who are capable of discharging important official duties with great efficiency and absolute honesty, for comparatively small reward. And, when such a supply has been created, the extension of State interference will no longer be needed.

Once more it must be admitted that to dogmatize upon the proper limits of State interference would be pedantry of the worst type. But it will probably also be admitted by careful observers that no proposal for its extension should be entertained, except in cases of urgent necessity, in which the object to be attained is of more importance than the method of its attainment, in which uniformity is of greater value than originality, and in which it is morally certain that the action of the State will be more effectual than private enterprise.

CHAPTER XIV

Varieties of Political Society

Ancient classification of States. — Until a few years ago, it was considered almost essential to begin every discussion on Politics with a mention of the celebrated theme of Aristotle, which classified States into Monarchies, Aristocracies, and Democracies or Polities. One of the surest signs that our knowledge of the History of Politics has greatly advanced within the last few years is the fact that this once famous classification has sunk into oblivion. It is neither exhaustive nor, whatever it may have been in Aristotle's day, is it very important. Still more silent has fallen the once noisy controversy as to the respective *merits* of these three forms of government. Slowly, but surely, people are coming to the wise conclusion that *no* form of government can be said to be absolutely the *best;* and that, in each case, that is the best which is most suited to the circumstances of the case.

Similarity of principle in all States. — As a matter of fact, *all* communities in the purely political stage will be found to be varieties of a single type, the type, namely, which is distinguished by the possession of *sovereignty.* Somewhere or another, in all communities of this type, there resides an authority which, in the last resort, controls absolutely and beyond appeal the actions of every individual member of the community. No doubt, as has been well pointed out, this sovereign power recognizes certain *moral* limitations of its action; it proceeds, in fact, at the risk of

revolution. But, so far as *law* is concerned, it acknowledges no superior and no limit. This condition of affairs has, no doubt, its drawbacks; it has also immense advantages. Its great practical convenience may be judged from the fact that it is the type of government in all the Great Powers of the modern world, with the possible exception of the United States of America.

Varieties of organization. — But, within these limits, *sovereignty* may be *organized* in different ways. It may be vested (in theory at least) in the hands of a single individual, as, for example, in Russia. Or it may be vested, and this is by far the commoner case, in a number of individuals or bodies, as in the Crown, Lords and Commons, in the British Empire. As this latter arrangement always gives rise to a good many elaborate rules concerning the relationship between the different individuals or bodies composing the *sovereign power*, it has received the name of *constitutional government*, while the sovereignty vested in a single individual receives the name of *autocratic government.* But we must be careful to remember that, owing to political passions, these names have received *moral* as well as *scientific* meanings. By *autocratic* rule, many people mean *arbitrary* or *capricious* rule; by *constitutional* government, they mean *mild* or *good* government. Of course the government of a numerous body may be, and often is, just as arbitrary and capricious as the rule of a single individual; and *vice versâ.* Needless to say, the proportions in which sovereign power is divided among the different members of a sovereign body varies almost infinitely with each case. And so also do the methods by which the various members are selected. Sometimes the executive and legislative powers are quite distinct, as in the German Empire, and, virtually, in Austria; sometimes they are combined, as in England. Sometimes the law courts are beyond the control of the legislature, as in the United States of America; sometimes they are, legally at least,

subject to its control, as, again, in the British Empire. Again, the head of the State may be hereditary or elective, and this independently of the extent of his powers. The German Emperor, with very great power, is hereditary; the President of the United States, also with great power, is elective. The King of the Netherlands, who has very little power, is hereditary; the President of the French Republic, also with small power, is elective.

Another, and almost equally important, variation of sovereignties is, that some are what we may call *ordinary*, others *extraordinary*. That is to say, in some States the sovereign authority is in constant action, or at least always ready to act; in others it requires an elaborate machinery to set it in motion. The British Empire is the best modern example of the former class; there the powers of the *ordinary* legislature are unlimited. Such was also the position of most of the European governments at the close of the last century. But this kind of sovereignty has grown much out of favour in the last hundred years; and the majority of the ordinary legislatures of Europe do not now wield *sovereign* powers. Thus, for example, the ordinary legislatures of Spain, Belgium, Holland and many of the German States, cannot go beyond the terms of written documents which place limits to their powers, and which are known as their *constitutions*. If any further powers are required, they must be sought from some *extraordinary* authority, such as a vote of the whole electors or inhabitants. This fact, which is extremely important, gives rise to the distinction between *fundamental* and *ordinary* laws; the former being those which cannot be passed or altered by the ordinary legislature, the latter, those which can. This distinction has been aptly expressed by Mr. James Bryce, as the distinction between *rigid* and *flexible* constitutions. It is closely, though not inevitably, connected with the division of constitutions into *written* and *unwritten*. The *written* constitution is nearly always *rigid;* because its

framers do not really believe that it ever will require alteration. The *unwritten* constitution, which has grown rather than been made, is nearly always *flexible*, i. e., it can be altered by the ordinary legislature.* This is just one of those cases in which the doctrine, that the circumstances of the case must determine the form of government, is most applicable. It would be an absurd piece of academic folly for a country like England, which has flourished for centuries with an unwritten constitution, to attempt to reduce her constitution to writing. But the circumstances under which most of the existing constitutions of Europe came into existence rendered written documents essential. Oddly enough, however, England did set the fashion of written constitutions, during the Civil War. After the Restoration, England abandoned them; but they were taken up by the United States of America when the latter achieved their independence; from America they passed to France, and from France, after the French Revolution, to the rest of Europe, and, ultimately, to the European colonies.

Value of local government.—The last distinction in point of *form* which we need point out is the important distinction between *centralized* and *localized* States. This is a distinction which is nearly always to be accounted for by the circumtances of history; but its practical importance is none the less on that account. Beginning with the highly centralized States, we may notice that they correspond closely with those States which have been formed by the gradual conquest by one ruler over a group of surrounding rulers, whose independence he has desired to crush. Thus, modern France was formed by the victory of the kings at Paris in a struggle, long and profound, with the rulers of the neighbouring fiefs—Burgundy, Champagne, Blois, Acqui-

*Italy seems to be the most important exception. The constitution (Statuto) is written, but can be altered by the ordinary legislature. Austria and France seem to be on the border line; but their constitutions are only partly written.

taine, Gascony, Toulouse, Brittany, etc.; and France is the best example of a highly *centralized* country. That is to say, the *central government* at Paris really controls even petty local affairs throughout France, leaving practically no independence to the so-called local authorities. Very much the same is the case in Italy, where the State was formed by the gradual victory of the House of Sardinia over the neighbouring principalities, although, as the struggle was very much less severe in that case, the centralization of Italy is, perhaps, largely to be accounted for by the influence of French models. On the other hand, a State which was formed suddenly by the conquest of a foreign ruler, or in which a long-established government has produced a real fusion of the population, there is generally a considerable allowance of genuine *local independence.* That is to say, the local authorities are genuinely chosen by the people whom they have to govern; they are not bound at every step to seek instructions from the central government; and, so long as they act within their legal powers, they cannot be interfered with by the central authorities. The best kind of all local government is that which is based upon ancient popular divisions, such as England, where the local units, to a greater or less extent, represent natural lines of race and settlement. It is hardly necessary to enlarge on the merits of *local government.* It stimulates and keeps alive political life in a way that central government alone can never do; it trains independent politicians for the service of the State; it prevents the establishment of that dead level of administrative uniformity which is the ideal of a central bureaucracy; and it relieves the central government of an immense amount of routine duty, which the latter could not perform satisfactorily. Its weak points are equally apparent. It is apt to be narrow-minded, ignorant and selfish; the smallness of its interests may fail to attract men of the best type, and so it may become very inefficient. But these dangers may be guarded against by the *criticism* of the central

government, a task which the latter is admirably qualified to perform, by reason of its wider outlook and greater experience.

Composite States. — Of late years, the distinction between centralized and localized States has taken a still more important shape, about which something must also be said. The really striking feature of the last century of politics has been the establishment of *federal* States. The way had been prepared by Switzerland, which has the distinguished honour of being the first country to introduce the new type of government to the modern world. Switzerland was followed by the United States of America in 1777, by the series of experiments which culminated in the Empire of Germany in 1870, and by the Dominion of Canada in 1867; while, at the present day, we are deeply interested in watching the success of another federal experiment in Australia.

Introduces a New Principle.—To the historian of Politics, the vital interest of the new tendency lies in the fact that it is the introduction of a new principle into the organization of society, the principle of *agreement* or *contract*. No doubt there have been other *influences* at work in the formation of federations. The military preponderance of Prussia, for example, brought the German Empire into existence; and the Imperial authority of Great Britain urged the Canadian provinces to unite. And so the German Empire and the Federal Dominion are hardly ideal specimens of federation. But the foundation of Switzerland, and the United States of America, were, and (if it takes place) the union of the Australian colonies will be, *purely voluntary*. Lawyers know that the *contract* is a somewhat late development in legal systems. Primitive societies do not recognize it, or recognize it but feebly. Perhaps the institution of *contract* is going to play as great a part in *politics* as it has played in *law*.

Nature of Federation.—Meantime, we may notice

that a *federation* takes place when a number of States hitherto independent of each other (though perhaps dependent on a higher power) desire *union*, but not *unity*. They are willing to join together for a greater or less number of purposes; but each of them desires to preserve its individual existence, so far as this is consistent with common action. The terms of federal unions are in no two cases alike; but, putting aside the cases of so-called *personal unions*,* where two States become, as it were, accidentally connected by dynastic ties, we may usefully classify them under the following heads, beginning with the lowest and proceeding to the highest degree of union.

1. **Real Unions.**—These occur where two States agree to accept *permanently* the same ruler, whilst retaining almost intact their independent existence. The most conspicuous example in modern politics is the case of Sweden and Norway; where the King of Sweden is, *ipso jure*, also King of Norway, but where Norway retains her independent Parliament and local institutions, and even (it would now seem) her independent foreign relations. The Act of Union of 1707 converted the existing *personal* or *dynastic union* of England and Scotland into a *real union*, of a somewhat closer type than Sweden-Norway, for the Parliaments of the two centuries were united, as well as their thrones.

2. **Confederations.**—This, at one time a rather favourite type of union, is now virtually discarded by civilized countries, with, perhaps, one striking exception. It occurs when two or more States join together, and delegate, either permanently or for a limited time, a limited number of their inherent powers to a central authority, but without in any way merging their identity. The powers delegated are usually only of a legislative and military character; the execution and administration of the laws of the central authority are left to the officials of the different States in their

*Such, for example, as England and Hannover from 1714 to 1827.

own territories. Sometimes the powers of the central authority are so small that the union is hardly entitled to rank as a real example of confederation; as, for example, when a number of States combine to form a *Zollverein*, or Customs Union. But usually the Confederate Government is empowered to maintain an army, a fact which almost necessarily implies control of the foreign policy of the different States, and to legislate on matters of common interest, such as posts and telegraphs, coinage, criminal offences, and so on. Of this type was the North German Confederation of 1866–70; and such it seems, though the circumstances are peculiar, is the position of the present German Empire, which, though it has vast legislative and military authority, has very little executive, administrative, or judicial power.* In this last feature lies the real weakness of the *confederation* as a type of union. The central body, having no officials to enforce its statutes, is obliged to resort to the clumsy expedient of so-called *federal execution*, in case of disobedience to its laws by one of its members. This expedient involves invasion of the offending State by the confederate army, and, of course, usually results in a break-up of the confederation. In Germany this unfortunate tradition was inherited from that political monstrosity the Holy Roman Empire.

Right of Secession.—A very important question was raised by the Southern States of the American Union, in the unhappy civil war of the sixties, which has in all probability, done much to discredit this type of government. They maintained, as will be remembered, that the Union was a *Confederation*, and that, therefore, any of its members who chose might *withdraw*. The event of the war was against this contention, which was, indeed, untenable in the face of the executive, administrative and judicial organization of the

*Switzerland seems to stand on the border line. The confederate government has little direct administrative or judicial authority; but it has a good deal of supervising and critical authority.

Union. Occasionally, however, the right of secession is expressly reserved by the pact of union.*

3. **Federations.**—Far more important is the true *federal* type of State, in which the central authority is invested, not merely with legislative and military, but with executive and judicial authority. Some of the most important modern examples of State-making fall under this head. It is the type of the United States of America, of the Dominion of Canada, and, probably in the near future, of the Commonwealth of Australia. Indeed it seems to be the true type also of the anomalous government of the British Empire, which, with a few important but feasible alterations, would approximate closely to a *federal constitution*. The essential features of a federal constitution have been admirably sketched by Professor Dicey, in his "Introduction to the Study of the Constitution," and may be summarized briefly thus:—

(*a*) *A written supreme constitution*, in order to prevent disputes between the jurisdictions of the Federal and the States' authorities;

(*b*) *A distribution of powers*, between the central or federal government and the governments of the several States which comprise the union; and probably also among the various parts of the federal government;

(*c*) *A Supreme Court*, charged with the duty of interpreting the constitution, and enforcing obedience to it by the organs both of the Federal and States' governments, and absolutely free from the influence of both.

It cannot be denied that the federal type of government, in all its forms, has its weak points. Based obviously on compromise, it is less likely than national or centralized government to awaken profound enthusiasm, or to gather

*This is the case with the so-called "Federal Council of Australasia," adopted as a temporary expedient in 1885. It had very little success.

around it that halo of patriotic sentiment which is one of the greatest safeguards of a State. Complicated as its machinery must inevitably be, and slow in its working, it is apt to get out of order and difficult to stir to prompt action. It was the first weakness which caused the heroic founders of modern Italy to reject the federal principle, when its adoption would, apparently, have solved many of their greatest difficulties. The second weakness has been unmistakably manifest in the history of the United States of America; and the third is daily obvious in the procedure of Swiss politics. But, in spite of these drawbacks, federalism has shown a marvellous capacity for adapting itself to different circumstances and different peoples; and it is probably destined to play a large part in future political history.

Common Law and prerogative States.—The last classification of political societies which we shall notice is one of extreme importance, but which has only of recent years deserved the attention which it merits. It divides them on the one hand into *common law*, and, on the other, into *prerogative States*. In the former class, all persons, officials no less than private individuals, are *equal* before the law, are judged by the same tribunals, and are subject to the same rules. In the latter, not only are there many privileged individuals, but the whole great class of Government officials is exempt (wholly or partially) from the jurisdiction of the ordinary Courts of Justice. To the first class belong, substantially speaking, only the English-speaking communities;* to the second all the other States of the civilized world. It is, therefore, especially important that English readers should quite understand what the distinction means.

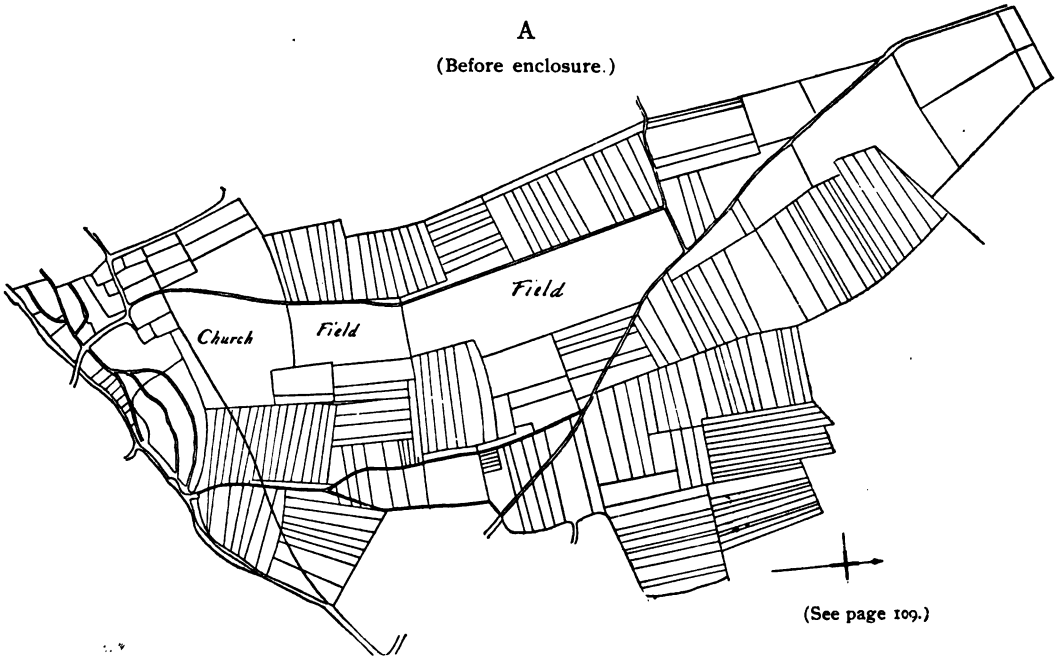
Common Law States.—It does not mean, of course, that in English-speaking communities a Government official may not do what in a private person would be unlawful.

*The principle has been tried and abandoned in modern Italy; there is some trace of its existence in Switzerland and Scandinavia.


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(See page 109.)

Every day we see Government officials imprisoning criminals, seizing goods for debt, searching suspected houses, and doing many other things which no private person may do. But it does mean—

(i) That no Government official may do these things without *legal authority;*

(ii) That, if his authority is questioned, it must be proved by him in precisely the same way, and before precisely the same tribunals, as in the case of a private person accused of a similar act.* If the act would have been criminal in a private person, the official may be prosecuted in a criminal court; if it would have been only a civil wrong in a private person, the official can be sued for it in an ordinary civil court. And neither of these tribunals will accept any plea of "act of State," or "superior orders," as an answer to such a complaint, at any rate when the complaint is made by a citizen. The net result is that the Government officials in an English-speaking country are subject to the ordinary or *common law.*

Prerogative States.—In other countries just the opposive rules prevail. On the one hand, Government officials, from the highest to the lowest, act in what they believe to be the interest of the State, whether or no they have legal authority for their actions. On the other, their acts cannot be questioned by the ordinary tribunals, at any rate without the consent of their official superiors. The net result is what the French call *droit administratif,* a phrase for which there is really no English equivalent, but which means law upon which only a Government official is entitled to act, and which

* It must be admitted that, even in "common law" countries, there are some exceptions to this rule. For example, in England, the King or Queen is *personally* exempt from suit, though his or her subordinates cannot plead orders as an excuse for illegal conduct. Peers are privileged in the matter of tribunal (not of law). Members of Parliament are temporarily privileged in respect of minor offences. But these exceptions are infinitesimal compared with the list in Continental countries.

is, in effect, what the Government chooses to make it. Under cover of this so-called "law," the ordinary citizen is subjected, in foreign countries, to an amount of supervision and arbitrary interference which would produce a revolution in England in a twelvemonth. And this, in spite of the most solemn guarantees of individual freedom in constitutional documents.

How the difference arose.—A thoughtful American writer, Mr. Lawrence Lowell, has indicated, no doubt with accuracy, the cause for the existence of the distinction. It is just one of those cases in which history furnishes the only clue to the solution of a modern difficulty. In England the *judicial* side of State activity developed with great completeness long before the *administrative* side. Consequently, when administrative activity began to increase, it found itself confronted with a powerful and highly organized system of judicial tribunals, which jealously kept it in check. There was a severe struggle, which covered the whole of the seventeenth century in England, and lasted well on into the eighteenth. But, in the long run, the *law courts* triumphed, and Englishmen reaped the benefit, not only in their own country, but in those new countries to which they carried the birthright of English *common law*. On the Continent, on the other hand, the *administrative* authority of the State developed long before the *judicial;* and men learned to look upon the administrative officials of the State as earthly providences, while the State's law courts were weak, and commanded no particular respect. Quite naturally, when the State's law courts were at length organized upon systematic lines, the administrative officials declined to submit their conduct to the scrutiny of the new tribunals. In fact, they utterly refused to believe in the possibility of stable government on such terms. In the view of every Continental Minister, Government officials *must*, if they wish to maintain order, frequently violate the ordinary law. And to have their authority questioned by ordinary tribunals would, he argues, be entirely subversive

of discipline. If it is pointed out to such a man that Anglo-Saxon Governments, all the world over, enjoy a stability which is certainly not less than that of their Continental contemporaries, he shrugs his shoulders, and enters the fact as one more of the peculiarities of the peculiar Anglo-Saxon. One humorous feature of the situation should not, however, be overlooked. When Montesquieu and other French writers of the eighteenth century dilated to their countrymen upon the virtues of the British constitution, one of the chief excellences which they praised was the so-called "separation of powers." Now the real "separation of powers" which the British constitution of the eighteenth century actually enjoyed was the freedom of the law courts from the control of the Ministers. But the French, and, after them, the other politicians of the Continent, took it to mean the freedom of the Ministers from the control of the law courts. And, when the governments of the continent were reconstructed after the French Revolution, this was the form in which the British principle appeared. Truly, logic is sometimes a dangerous instrument.

Here must end our imperfect attempt to evolve order out of the chaos of History. Those readers to whom the political arrangements of the world represent merely the outcome of a series of local accidents will have little sympathy with an effort based on a totally different belief. But to those who, with the writer, regard History as the outward manifestation of great universal laws, capable of infinite variety in the circumstances of their application, but tending with irresistible impetus to similar ends, this attempt may seem to have been made not altogether in vain. Regarded from one standpoint, the Art of Politics may appear to be nothing but the "scuffling of kites and crows." Regarded from another, it is an effort, miserable and imperfect perhaps, but still an effort, to realize that deep-seated instinct of humanity which bids Man turn for help and guidance to his fellow Man. It is an affirm

tion, on unmistakable lines, of that social side of our nature which may fairly be regarded as one of the fundamental facts of the universe. As such, it is surely worth earnest and impartial study; and all the dreary and repellent accessories which attend its practice cannot disguise its essential importance. The day may be far distant when the actual political arrangements of the world will realize the highest ideal of which our social instincts are capable. But every life honestly spent in the faithful service of the common weal, every hour devoted to the earnest study of the public good brings that day more surely within our reach.

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